

# **OAK PARK AND RIVER FOREST HIGH SCHOOL**

## **Finance Committee Meeting Agenda**

**February 15, 2011**

**Board Room**

**7:30 a.m.**

- |  |                  |
|--|------------------|
| 1. Minutes   |                  |
| 2. Architect Contract                                  | Ken Florey       |
| 3. RFP Construction Management                         | Robert Zummallen |
| 4. Construction Management Contract                    | Ken Florey       |
| 5. Student Hire Process                                | Lauren M. Smith  |
| 6. Instructional Materials Recommendation              | Cheryl Witham    |
| 7. Office Supply Contract Extension                    | Tim Keeley       |
| 8. Special Ed. Transportation RFP                      | Tim Keeley       |
| 9. Field Trip/Activity Transportation RFP              | Tim Keeley       |
| 10. Student Fees 2011-2012                             | Cheryl Witham    |
| 11. Finance Advisory Committee Update                  | Cheryl Witham    |
| 12. Student Achievement Initiatives for FY 2012 Budget | Board Discussion |
| 13. PTAB Resolution                                    | Cheryl Witham    |
| 14. Monthly Financial Report                           | Information      |
| 15. Treasurer's Report                                 | Information      |

### **Finance Committee Members**

**Co-Chairs: Amy McCormack  
John C. Allen IV**

Board of Education

DLT

Jim Hunter – FSEC Chair

July, 2010	August, 2010	September, 2010	October, 2010
	Tentative Budget 2010 - 2011	Fin. Adv. Com Proposal Wireless Access Employee Ben. Ins. Broker 2010 - 2011 Budget Approval	Insurance Renewals Levy Timeline Books & Fees Report FY 2010 Audit Report
November, 2010	December, 2010	January, 2011	February, 2011
Preliminary 2010 Levy  Employee Benefit Ins. Renewal Update Vanguard Energy Svcs.	2010 Levy  Youth Interventionist	Authority to Commence Amend. Budget 10/11 Authority to Commence FY 11/12 Budget Prep Contracts of \$10,000 - \$25,000 Report Coaches Stipends vs Activity Funds	Student Fees 11/12  PTAB Resolution  Transportation
March, 2011	April, 2011	May, 2011	June, 2011
Author. to Commence 2011 Audit Amended Budget Dist. 200 Food Service lunch prices 11-12 Dist. 97 Food Service lunch prices 11-12 2011 - 2012 Athletic Uniform Bid Board of Ed FY 2012 Budget Life Safety Amendment	Amended Budget Approval Collaboration of Early Childhood Triton Contract Division FTE 5 Year Plan Oak Park Youth Township PaperBid Construction Bids Final Staffing and Stipends FY2012 Printing Bid Building Security	Prevailing wage Resolution to transfer funds Contracts for FY 11-12 Thrive Services Towel Service Bid Wellness Report Minority Hiring Cost Containment/FAC update Strategic Plan Budget RFQ Food Service Rollover Bids	FY 12 Preliminary Budget Property & Liability Ins Renewal Workers Comp Renewal
Every Meeting:			
Minutes			
Construction Update			
Finance Advisory Committee Update			
Financial Reports			
Treasurer's Report			

OAK PARK AND RIVER FOREST HIGH SCHOOL  
201 North Scoville Avenue  
Oak Park, IL 60302

**FINANCE COMMITTEE MEETING**

Tuesday, January 18, 2011

A Finance Committee meeting was held on Tuesday, January 18, 2011. Co-Chair McCormack called the meeting to order at 7:39 a.m. in the Board Room. Committee members present were John C. Allen, Terry Finnegan, Dr. Ralph H. Lee (arrived at 7:50 a.m.), Amy McCormack, Dr. Dietra D. Millard, and Sharon Patchak-Layman. Also present were Dr. Steven T. Isoye, Superintendent; Michael Carioscio, Chief Information Officer; Philip M. Prale, Assistant Superintendent for Curriculum and Instruction; Lauren M. Smith, Director of Human Resources; Cheryl L. Witham, Chief Financial Officer and Treasurer; and Gail Kalmerton, Executive Assistant/Clerk of the Board.

Visitors included James Paul Hunter, FSEC Chair; Doug Wiley, OPRFHS Supervisor of Finance; Robert Zummallen, Director of Buildings and Grounds; Dale Craft, Physical Education Division Head; Laura Pauli and Nathan Nisson of PMA; Ken Florey of Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.; and Rance Clouser and John Phelan, community members.

Ms. McCormack announced that if the meeting were not adjourned by 9:30 a.m. it would be recessed at 9:30 a.m. in order to hold the Special Board Meeting and reconvened after that time.

**Approval of December 7, 2010 Finance Committee Minutes**

It was the consensus of the Committee members to accept December 7, 2010 Finance Committee minutes, as presented.

**Legat Contract**

Ken Florey, construction attorney, gave an update on the negotiations of the contract with Legat Architects. He reiterated that the District was preparing to be more transparent in its process as it was separating the work of the architect and the construction firm, with a construction attorney. The Board of Education will have more control over the contract and contingencies, i.e., change orders. Because change orders are fluid, a process is necessary to approve small changes expeditiously (currently \$25,000 or less), so that the work can continue and he hoped that the current dollar amount would be raised. ISBE suggests 10 percent of the project. A change in the Board of Education's policy will be required. Change orders that are more than 10 percent must go to bid. He hoped for contract resolution with Legat soon and that a construction manager would be chosen and approved in February. He informed the Board of Education that should it have special requirements, e.g., pursue women or minority-owned business trades, have a successful track record in working with diversified subcontractors, etc., it should make that known soon so that contractors can encourage that participation. Requiring exact percentages of firms has been challenged and found illegal. Subcontractors are hired because they are the lowest bidder.

### **Construction Update**

Mr. Zummallen informed the Committee that the 2010 summer projects were nearly completed with the exception of a few punch list items. Athletics seems happy with the installation of the new boilers because hot water is now immediately available in the showers and for the pools.

Ms. Patchak-Layman requested the minutes of Facilities Committee meetings on a regular basis via email.

### **PMA Investment Update and CDARS Deposit Placement Agreement**

Ms. Laura Pauli (PMA representative) informed the Committee members of different options for the investment of the District's funds that fit its scope and its objectives, i.e., permissible under state statute, appropriate for its investment objectives, and safe. PMA reviews 1) the vehicles used in the District's portfolios, e.g., banks and investment options, etc., 2) its liquidity by doing cash flow analysis to insure that cash flow needs meet expenditures, and 3) the return on investment.

One new investment, CDARS, is a platform that allows deposits in a lead bank to be sent to banks within a national network (usually smaller banks) in order to utilize the FDIC insurance. This is an opportunity to 1) look at more banks, and 2) access different portfolios to get higher interest rates. A deposit of \$1 million in the lead bank would result in the District receiving one interest rate, even though the FDIC insurance from four different banks would be used. CDARS owns the administrative platform and PMA works as the intermediary to assist in finding the lead bank that sets the rate. Currently, OPRFHS has its money in 99 banks. The cost for this would be 25 basis points. It was unclear as to whether banks had to pay a fee to belong to CDARS. Placing the District's funds in this type of option even though all of its current deposits are guaranteed by the FDIC would eliminate 1) any delay in retrieving its money should there be a bank failure, and 2) the stress and inconvenience of going through a bank failure.

A second new investment option is a Term Series Pool. The District already invests in two of the series. Each pool is unique with bank deposits within a portfolio and the District would buy shares in the pool.

### **Comcast Contract**

It was the consensus of the Finance Committee members to recommend to the Board of Education that it approve the contract with Comcast at its regular January Board of Education meeting, as presented.

Mr. Carioscio explained that having two providers of bandwidth in the building was positive both in terms of cost and service.

Increasing the high school's bandwidth is an underlying piece of technology that it must have. Should any further discussion occur about services for the whole community, it will help/add to that discussion. District 200 is also meeting with associate District 90 and District 97 and talking with other districts about their computer activity.



#### **Amendment of Lease with Konica-Minolta**

It was the consensus of the Finance Committee members to recommend to the Board of Education that it approve the amended lease with Konica-Minolta at its regular January Board of Education meeting. The amendment of the lease will allow Konica-Minolta to provide OPRFHS with a replacement for the DocuTech machine and provide service to it at the same cost and for the same term.

#### **Northshore Academic Contract**

It was the consensus of the Finance Committee members to recommend to the Board of Education that it approve the contract with Northshore Academics for supplemental educational services at its Special Board meeting following this meeting.

As a requirement of Title I, OPRFHS is required to notify families that it will provide outside tutoring if their children did not make AYP. OPRFHS mailed letters in the fall to those families whose children qualify for the Free and Reduced Lunch Program, are either freshmen or sophomores and did not make AYP about tutoring services and those providers. Thirty-two slots have been filled and there is a waiting list of five. If a family chooses not to follow through, the slot will be offered to the next family on the waiting list. Title I funds are used to provide supplementary educational services, professional development, offset some summer school costs, and a proposed reading program.

#### **Summer School 2011 Budget and Fees**

Discussion ensued about the administration's recommendation to increase tuition by \$5 and to increase teacher stipends by \$50 or a 2.25% increase for the 2011 Summer School. The dates of Summer School would be June 16 through July 27, which is 27 days of instruction. Some committee members wanted to consider holding steadfast on tuition and teacher stipends and asked how OPRFHS stipends compared to other school districts. Approximately 42 to 44 teachers teach summer school of which 10 to 15 are from other schools. The argument given about raising the cost of tuition was because tuition not only covers the cost of the regular offerings, but also it helps support the Special Education portion of summer school, the 8 to 9 Program, the 9 to 10 Program, some assistance offered to students who cannot afford summer school or are specifically targeted by counselors for the Math Step Up Program, etc. Also the musical varies in its costs because sometimes it is not as successful as it is hoped or is more expensive. This year there may be some additional costs for support staff (security and clerical) as they will be paid at an hourly rate, per the Fair Labor Standards Act (FLSA), and after 40 hours paid at 1 ½ times their standard hourly rate. The District was appreciative that last year there was a surplus which went into the General Education Fund.

The Committee asked the administration to provide the Board of Education at its regular January meeting, the hourly rates for teachers from other districts and a comparative surplus between retaining the \$180 tuition fee versus increasing it to \$185.

### **Bid for Commodities**

It was the consensus of the majority of Finance Committee members to recommend that the Board of Education approve the bid for commodities at its regular January Board of Education meeting on its consent agenda.

Ms. Witham reported that OPRFHS is audited by the government and has found that the OPRFHS Wellness Committee has stricter guidelines than the government.

### **Advisory Leadership Team Composition**

This item was tabled until the adjourned Finance Committee meeting on Thursday, January 20.

### **Authority to Commence the Amended Budget 2010/11**

It was the consensus of the majority of the Finance Committee members to recommend to the Board of Education that it approve the resolution giving authority to commence the Amended Budget for 2010/11 at its regular January Board of Education meeting.

### **Authority to Commence with Tentative Budget 2011/12**

It was the consensus of the majority of the Finance Committee members to recommend to the Board of Education that it approve the resolution giving authority to commence the Budget for 2011/12 at its regular January Board of Education meeting on the consent agenda.

Further discussion would occur at the PEG meeting on January 20, 2011 about how the Board of Education goals would be incorporated into the budget.

Ms. Witham reported that the River Forest TIF dollars (\$500,000) would be included in the amended budget. Discussion ensued about whether to put this unanticipated funding in either the Capital Fund or the Education Fund. Ms. Witham recommended using these dollars to begin construction prior to July 1, when the new budget would begin so as to insure that everything could be completed before the start of the 2011-12 school year. She added that the one-time funds should be used for one-time expenditures. Ms. Patchak-Layman suggested that this money could be used for pilot projects or for one-time activities as a way to decide whether or not to include it as part of the regular budget or make modifications. She asked if this conversation was to be part of the amended budget or the regular budget process and suggested that this money could be used to start construction before July 1 and then replaced or held in an escrow account for next year. Ms. Witham stated that this is a Board of Education's decision.

### **Agenda Items**

Due to the lateness of the day, Ms. McCormack asked if there were any questions/discussions about the following agenda items. There was no discussion or questions about these items.

- 1) River Forest TIF Update
- 2) Cicero Township Treasurer Update
- 3) Contracts between \$10,000 - \$25,000

- 4) Financial Reports
- 5) Monthly Treasurer's Report

As such, the Financial Reports and the Monthly Treasurer's Report will be forwarded to the Board of Education for approval at its regular January Board of Education meeting.

**Adjournment**

The Finance Committee recessed at 9:27 until after PEG Meeting on January 20, 2011.

OAK PARK AND RIVER FOREST HIGH SCHOOL  
201 North Scoville Avenue  
Oak Park, IL 60302

**Adjourned FINANCE COMMITTEE MEETING**  
Thursday, January 20, 2011

An Adjourned Finance Committee meeting was held on Thursday, January 20, 2011. Ms McCormack called the meeting to order at a.m. in the Board Room. Committee members present were John C. Allen, Dr. Ralph H. Lee, Amy McCormack, Dr. Dietra D. Millard, and Sharon Patchak-Layman. Also present were Dr. Steven T. Isoye, Superintendent; Michael Carioscio, Chief Information Officer; Philip M. Prale, Assistant Superintendent for Curriculum and Instruction; Nathaniel L. Rouse, Principal; Lauren M. Smith, Director of Human Resources; Cheryl L. Witham, Chief Financial Officer and Treasurer; and Gail Kalmerton, Executive Assistant/Clerk of the Board.

Visitors included Kay Foran, Community Relations and Communications Coordinator; James Paul Hunter, FSEC Chair.

**Advisory Leadership Team (ALT)**

Relative to the DLT's recommendation for the composition and the format of the ALT, Ms. Patchak-Layman felt the process should be open (the meetings announced or posted and minutes kept) and that it was important for not only the staff but the students as well to hear the conversation. She asked what was it that they did not want the people to hear.

Discussion ensued about FAC's unanimous opinion for transparency and has built in safeguards for that to occur but it also felt that the best communication would occur in the meetings were not open to the public. In the past when visitors have attended, some of the committee members were uncomfortable. The Committee was also open to hearing from others about "best practice." The stakeholders have a different responsibility than the Board of Education does.

Dr. Millard favored complete transparency, understood the committee's recommendation and wanted to provide the best opportunity for a most complete conversation. Ms. McCormack concurred with not stifling the conversation and felt there were many checks and balances in the model and that the conversation would be open at the Board of Education table. Ms. Patchak-Layman stated that if it is known that the meeting is open, then it is a known factor and suggestions can be made with that knowledge. If format is approved as presented, it was not conducive to her understanding of the Open Meetings Act (OMA) which says that any groups that provide advice to the Board of Education and its documents are open to the public and the FAC model would have to be amended as it had been approved by the Board of Education.

Dr. Lee questioned the assumptions: 1) elected officials do not and should not have the responsibility of saying whatever; when they do so, they must accept the consequences of having done so; 2) employees making recommendations to the Board of Education having to do with the welfare of the district should be able to say whatever they want to say without

fear of the consequences, unlike Board of Education members. He believed that anyone wanting to influence the welfare of the District should have the opportunity to say whatever is in the best interest of the district, and take responsibility for saying it. Having been a teacher, he understood that some teachers fear repercussions about what is said in a Board of Education meeting. He had done so and he had accepted the responsibility. He supported an open process and he hoped that the committee members had the courage of those convictions and that there were safeguards so that they do not have to suffer the consequences.

Mr. Allen noted that the proposed format was not covered by the OMA and, thus, it legally did not have to follow those rules. He wanted everyone to have open and free conversations and that the model did provide transparency. This body only makes suggestions in an open forum. He supported the proposal as presented.

This will be presented at the regular Board of Education in January for approval.

**Adjournment**

The Finance Committee adjourned at 12:19 a.m.

***Oak Park and River Forest High School  
District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education  
FROM: Cheryl L. Witham  
DATE: February 15, 2011  
RE: Architect Contract

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**BACKGROUND**

We have incorporated Ms. Patchak-Layman's request to add language to section 3.2.5.1. We have carefully reviewed Mr. Allen's request to insure diversity in the labor contracts and have added language to the Construction Contract.

**SUMMARY OF FINDINGS**

Attorney Ken Florey will be available to explain the contracts and to answer questions.

**RECOMMENDATIONS (OR FUTURE DIRECTIONS)**

To approve the Architect Contract at the regular Board of Education meeting.

# AIA® Document B101™ - 2007

## Standard Form of Agreement Between Owner and Architect

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

BETWEEN the Architect's client identified as the Owner:  
(Name, address and other information)

Oak Park and River Forest High School District 200

and the Architect:  
(Name, address and other information)

Legat Architects  
2015 Spring Road, Suite 175  
Oak Brook, Illinois 60521

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

2011 Renovation Blanket Agreement for all work directed by Owner and as more  
specifically described per project on AIA 6802 - 2007

The Owner and Architect 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.

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

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## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in ~~optional-approved~~ Amendment example Exhibit A, Initial Information:  
*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

As set out in Owner's RFP, or approved Amendment TDD

- .2 Substantial Completion date:

As set out in Owner's RFP, or approved Amendment TDD

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

§ 1.4 The Owner is engaging a Construction Manager in an "at risk" capacity. All references in this Agreement to "Contractor" shall also mean "Construction Manager."



## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances performing architectural services for school districts. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. No other provision of this Agreement (or any document incorporated herein, or of any document binding upon the parties) shall be effective to the extent that it abridges or abrogates the standard of care set forth in this Section, regardless of the apparent specificity of the modifying provision.

§ 2.2.1 The Architect shall engage sub-consultants for portions of the Services as deemed necessary by the Architect. All services, whether performed by the Architect directly, or by sub-consultants shall be performed with the same standard of care provided in Section 2.2 of this Agreement.

§ 2.2.2 The Architect shall perform all Services in accordance with the professional standard of care relative to all applicable federal and state laws, as well as rules, regulations and specifications adopted by the Illinois State Board of Education, the Illinois Department of Public Health, and any other agency with authority over the construction or rehabilitation of school facilities.

§ 2.3 Prior to commencement of services hereunder, the The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement: ~~If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.~~  
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

- .1 General Liability

See attached Certificate of Insurance, EXHIBIT B

- .2 Automobile Liability

See attached Certificate of Insurance, EXHIBIT B —

- .3 Workers' Compensation

See attached Certificate of Insurance, EXHIBIT B —

- .4 Professional Liability

See attached Certificate of Insurance, EXHIBIT C —

§ 2.5.1 Additional insurance requirements are found in Article 10 of this Agreement.

## ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, ~~and electrical engineering, and other~~ services necessary for the complete design of, and preparation of construction documents for, the Project. Services not set forth in Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants, if any. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner If the Architect, in the exercise of the applicable standard of care, should reasonably have become aware if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion and Final Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants (if any), and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. Architect shall prepare the Construction Documents in compliance with all applicable building codes, as well as all federal, state, and local laws. As necessary, Architect shall review each agreement between utility companies and the Owner to confirm that the proposed utility service capacity, equipment, entrance location(s) and routing path has been provided to meet the requirements of the project design.

§ 3.1.7 Upon becoming aware of any error or omission in the Construction Documents (whether during the bidding phase or construction phase) Architect shall promptly perform the necessary professional service to issue an addendum or change order, as the case may be, to correct or clarify errors, omissions, or ambiguities. Such service shall be performed by Architect without additional compensation, unless the error or omission was not the fault of the Architect or their Consultants.

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§ 3.1.8 If Architect key personnel are identified in Architect's proposal, such personnel shall not be removed or replaced for services performed for the Project without Owner's prior express written Consent.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

## § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, if any, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, if any, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design and comments thereupon, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of

drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect ~~may~~ shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. The Owner may approve the Schematic Design Documents subject to comments. The Architect shall consider and evaluate the comments for incorporation into subsequent portions of the of the Services hereunder.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. The Owner may approve the Design Development Documents subject to comments. The Architect shall consider and evaluate the comments for incorporation into subsequent portions of the Services hereunder.

### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor, and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

## § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 The Architect shall submit to Owner's attorneys for review and approval all agreements and conditions prepared for publication to bidders prior to publication and advertisement for bids.

### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 It is anticipated that all construction work shall be publicly bid. Where public bidding is not required.

Architect shall assist with negotiated proposals. Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction as amended. If the Owner and Contractor modify AIA Document A201-2007 subsequent to contract award, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.4 The Architect shall promptly make corrections to the Construction Documents, at no cost to the Owner, if any errors, omissions, or ambiguities are discovered during the Construction Phase, unless the error or omission was not the fault of the Architect or their Consultants.

§ 3.6.1.5 The Architect shall conduct progress periodic review and payment review meetings which shall include the Owner, the Architect, and appropriate prime contractors. The Architect shall record the meetings in written meeting minutes, which shall be distributed for review no more than two days following each meeting. Comments on the published meeting minutes shall be discussed as part of the following progress review and payment meeting. Each progress review and payment meeting shall cover, at a minimum, progress, new and old business, and quality schedule. Notwithstanding, it is anticipated that the Contractor shall have separate meetings for its own purposes of planning and conducting its own work.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect, and its sub-consultants, shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall 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 approved construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.1.1 On the basis of Architect's on-site construction observation, the Architect shall endeavor to keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work. The Architect shall promptly notify the Owner of any defects or deficiencies in the Work observed by the Architect. The Architect shall submit a field report to the Owner for each week of site visits or for each site visit, whichever the Architect deems appropriate, and shall submit a copy to the Contractor.

§ 3.6.2.2 The Architect has the authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, 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.

§ 3.6.2.3 The Architect shall 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 shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness so as not to delay the progress of construction.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not

show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims ~~between by the Owner and Contractor~~ as provided in the Contract Documents.

### **§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's 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, and that the Contractor is entitled to the amount sought in the application for payment. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.1.1 The Construction Documents shall provide that each Prime Contractor submit a schedule of values prior to commencing its Work. The schedule of values, among other things, shall be used by the Architect as a basis for evaluating the applications for payment.

§ 3.6.3.1.2 The Architect shall determine whether Contractor's contractual prerequisites to payment have been satisfied for each Application for Payment, such as submission of Certified Payrolls, submission of Schedule of Values and submission of Lien Waivers properly executed by Subcontractors, among other things.

**§ 3.6.3.2** The issuance of a Certificate for Payment shall 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) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment.

### **§ 3.6.4 SUBMITTALS**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule 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.

**§ 3.6.4.2** In accordance with the Architect-approved submittal schedule, the Architect shall 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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. 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.

**§ 3.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. 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.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness in compliance with the Contractor's reasonable requested amount of review time for the Architect's response. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor, and the Architect's responses thereto, in accordance with the requirements of the Contract Documents. The Architect shall also maintain a record of requests for information and responses thereto, and copies of the same.

#### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

#### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor, review for compliance with the Contract Documents, and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. However, nothing in this paragraph shall obligate the Architect to make legal determinations regarding the adequacy of language or signatures in the documents provided.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the punch list created after Substantial Completion, submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.6.6.6 The Architect shall periodically review the Contractor's marked up as-built drawings to determine whether the Contractor is recording information as required in the Contract Documents. Before Final Completion, the Architect shall cause the as-built drawings to be transferred to the Owner. Before Final Completion, the Architect shall require the Contractor to transfer the as-built drawings to the Owner.

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. (Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™ 2007)		
§ 4.1.6 Building information modeling		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™ 2007)		
§ 4.1.10 Value Analysis (B204™ 2007)		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site project representation		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-designed record drawings		
§ 4.1.15 As-constructed record drawings		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™ 2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner's consultants		
§ 4.1.20 Telecommunications/data design		
§ 4.1.21 Security Evaluation and Planning (B206™ 2007)		
§ 4.1.22 Commissioning (B211™ 2007)		
§ 4.1.23 Extensive environmentally responsible design		
§ 4.1.24 LEED® Certification (B214™ 2007)		
§ 4.1.25 Fast-track design services		
§ 4.1.26 Historic Preservation (B205™ 2007)		
§ 4.1.27 Furniture, Finishings, and Equipment Design (B253™ 2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.1 The Owner may from time to time, without invalidating this Agreement, direct changes in the Architect's Services. The changes may include additions, deletions, or modifications to the Architect's Services. Upon receipt of a Direction for Change in Services, the Architect shall proceed promptly to enact the Change in Services. Concurrently, the Owner and Architect shall agree on an equitable adjustment in the Architect's Basis of Payment.






- ~~.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;~~
- ~~.7 Preparation for, and attendance at, a public presentation, meeting or hearing;~~
- ~~.8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;~~
- ~~.9 Evaluation of the qualifications of bidders or persons providing proposals;~~
- ~~.10 Consultation concerning replacement of Work resulting from fire or other cause during construction;~~
- ~~or~~
- ~~.11 Assistance to the Initial Decision Maker, if other than the Architect.~~

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- ~~.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation;~~
- ~~.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker, or
- .5 Evaluating substitutions proposed by the Owner ~~or Contractor~~ and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two ( ~~2~~ ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- ~~.2 Twelve~~ ( 12 ) visits weekly to the site by the Architect and appropriate Architect's Consultants over the duration of the Project during construction
- ~~.3 Three~~ ( 3 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- ~~.4 Three~~ ( 3 ) inspections for any portion of the Work to determine final completion
- ~~.5 Architect shall provide all site visits and inspections necessitated to resolve errors or conflicts in the Architect's and Architect's Consultants Construction Documents, as part of Basic Services and in addition to the amounts identified in 4.3.3.1, 2, 3, and 4.~~

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§ 4.3.4 If the services covered by this Agreement have not been completed within time contemplated in Section 1.2, ( ~~—~~ ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall, in consultation with the Architect, provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. ~~Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.~~

§ 5.2 The Owner shall, in consultation with the Architect, establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the

Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree in writing to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 At the Architect's request, ~~The~~ Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

~~§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.~~

§ 5.6 ~~The Architect~~ Owner shall coordinate the services of ~~Owner's~~ own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall, upon request of the Architect, furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. Failure of the Owner to discover such defects, or to so notify the Architect, shall not relieve the Architect of any of its obligations hereunder.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the ~~Architect~~ Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land,

rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

~~§ 6.2~~ The Owner's budget for the Cost of the Work ~~will be established in each approved Amendment issued~~ provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect, except as provided elsewhere in the Article.

~~§ 6.3~~ In preparing estimates of the Cost of Work, the ~~Construction Manager~~ Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The ~~Construction Manager's~~ Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. ~~If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.~~

~~§ 6.4~~ If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

~~§ 6.5~~ If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

~~§ 6.6~~ If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- ~~1 — give written approval of an increase in the budget for the Cost of the Work;~~
- ~~2 — authorize rebidding or renegotiating of the Project within a reasonable time;~~
- ~~3 — terminate in accordance with Section 9.5;~~
- ~~4 — in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or~~
- ~~5 — implement any other mutually acceptable alternative.~~

~~§ 6.7~~ If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

~~§ 7.1~~ The Architect ~~and the Owner warrant~~ that in transmitting Instruments of Service, or any other information, the ~~Architect transmitting party~~ is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the ~~Owner and~~ Architect 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.

~~§ 7.2~~ 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 shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. Provided that the Owner is not

in default under this Agreement, all studies, reports, drawings, specifications, and other documents, whether in hardcopy or electronic form, prepared by Architect as part of the Services shall be deemed property of Owner.

1 The architect shall remove from the electronic versions of the documents the title block, Professional seals, Professional stamp and signatures on all electronic versions of the Construction Documents provided to Owner as Owner's property.

2 The Architect shall maintain rights to use limited images for marketing and promotional purposes.

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§ 7.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner is not in default substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.2 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's negligent use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect, and all rights against each other and against the contractor, consultants, agents and employees of the other for damages, except as it might be they may have on the ground of such damages, as set forth in AIA Document A201-2003 (and any amendments to the Contract Documents), the Owner and the Architect, as appropriate, shall waive all rights of the contractor, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 8.2.2** The Owner and Architect ~~shall~~ may endeavor to resolve claims, disputes and other matters in question between them 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 Agreement, and filed with the person or entity administering the mediation. ~~The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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 proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

**§ 8.2.3** 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.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
(~~Check the appropriate box. If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.~~)

☒ Arbitration pursuant to Section 8.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☐ Other (*Specify*)

### **§ 8.3 ARBITRATION**

**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement 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 this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration. At the Agreement of the Owner and Architect sole, all claims, disputes and other matters in question between any of the Architect, Owner, Contractor, Subcontractor or any material supplier arising out of, or relating to, agreements to which two or more of said parties are bound, or the Contract Documents or the breach thereof, except with respect to the Architect's decisions on matters relating to aesthetic effect, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining at the time of filing, as modified herein, unless the parties mutually agree otherwise. In any such arbitration, the arbitrator shall make separate findings as to liability and the amount of damages with respect to each party to the arbitration to the extent any liability or responsibility for damages exists. All parties which have an interest in the dispute shall be joined as parties to the arbitration. The Architect's sub-consultant agreements shall require such joinder. The arbitrator shall have authority to decide all issues between the parties including but not limited to procedural matters, claims for extras, delay and liquidated damages, matters involving defects in the Work, right to payment, whether matters decided by the Architect involve aesthetic effect and whether the necessary procedures for arbitration have been followed. The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons, duly consented to by the parties, shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 8.3.2** The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by an applicable statute of limitations.

§ 8.3.3 All parties shall carry on their respective obligations, and perform their duties during any arbitration proceedings.

§ 8.3.4 In addition to the other rules of the American Arbitration Association applicable to any arbitration hereunder, the following shall apply:

(a) Promptly upon the empanelling of the arbitrator, the arbitrator shall direct all parties to set forth in writing and to serve upon each other party a detailed statement of its contentions of fact and law.

(b) All parties to the arbitration shall be entitled to reasonable discovery procedures to be established by the arbitrator.

(c) The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein. Similarly, the scope of discovery, and the extent of proceedings hereunder relating to discovery, shall be consistent with the parties' intent that the arbitration be conducted as expeditiously as possible.

§ 8.3.5 In the event of any litigation or arbitration between the parties hereunder, all reasonable attorneys' fees and other costs incurred shall be awarded to the prevailing party.

§ 8.3.1.1 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, dispute or other matter in question 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, dispute or other matter in question.

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

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

#### § 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 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).

§ 8.3.4.2 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.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

#### **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses

incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. ~~When If the Owner's suspension was for convenience rather than for cause, when the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due, ~~and all Termination Expenses as defined in Section 9.7.~~

~~§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~

~~§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.~~

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Illinois, ~~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 8.3.~~ Exclusive Venue for resolution of all disputes shall lie in Cook County, Illinois.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction, as amended and included in the Construction Documents.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect. There are no third party beneficiaries to this Agreement.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.



§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. ~~The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.~~

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.9 The Architect shall submit valid certificates of insurance and, if requested, policies, in form and substance satisfactory to Owner evidencing the effectiveness of the insurance policies along with original copies of the amendatory riders to any such policies to Owner for Owner's approval before Architect commences the performance of any services hereunder.

§ 10.10 The Architect hereby agrees to maintain the insurance described in Article 2 herein during the duration the performance of all Services. If the Architect fails to furnish and maintain the specified insurance, the Owner may terminate the Agreement.

§ 10.11 Architect shall include the Owner as additional insured by causing amendatory riders or endorsements to be attached to the Commercial General Liability insurance policies described in this Agreement. The insurance coverage afforded under the Commercial General Liability policies shall be primary to any insurance carried independently by the Indemnitees (as identified in Section 10.12 below). Said amendatory riders or endorsements shall indicate that as respects the Indemnitees, there shall be severability of interests under said insurance policies for coverages provided under said insurance policies.

§ 10.12 To the fullest extent permitted by law, the Architect hereby agrees to indemnify and hold the Owner, its directors, members, officers, agents, and employees (collectively the "Indemnitees") harmless from all losses, claims, liabilities, injuries, damages and expenses, including reasonable attorneys' fees, that the Indemnitees may incur to the extent arising out of the negligent performance or breach of performance by the Architect of its duties and obligations under or pursuant to this Agreement.

§ 10.13 Time is of the essence of this Agreement.

§ 10.14 Architect understands and acknowledges that its work, in whole or in part, will be performed on public school property where there may be direct daily contact with school systems. The Architect further understands and acknowledges that the State of Illinois requires that all employees of vendors, licensees, consultants or others having direct daily contact with students are subject to a criminal background check and may not be listed on the State Sex Offender Registry. Prior to allowing any of its employees who will be performing the portion of work on or to school property, the Architect agrees to provide the District with the following:

(1) ... Evidence that each employee, agent, consultant or other person performing work on school property under this Agreement has been subjected to a criminal background check in conformity with ICS 11-1.5-10-21.2; that such persons are not listed on said Registry; and said persons have no current convictions for the offenses listed under 105.6.CB 5/31/21/2

(2) ... The Architect will provide the District, upon request, a current criminal background check conducted on each such person.

10.15 And the District agrees to cooperate with or facilitate such investigations in and the District hereby agrees to fully cooperate with and assist in school property in order to fulfill its obligations under the provisions of work the District then or then again requires and render all such persons or firms in conformity with the requirements of this contract and ICS 11-1.5-10-21/2

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## ARTICLE 11 COMPENSATION

(Insert amount of, or basis for, compensation.)

% of total construction cost for construction related services as defined in Section 6.1

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**§ 11.3** For all Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

Percentage of Construction Cost Compensation shall be established by mutual agreement in writing between the Owner and Architect prior to beginning any additional Services.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

**§ 11.6** When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

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User Notes: (1336690020)

Employee or Category

Rate

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's ~~liability insurance~~ expense of additional professional liability insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the ~~Architect~~ Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures authorized in advance by the Owner;

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ~~10%~~ ( 10% ) of the expenses incurred.

#### § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

~~If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

#### § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of zero (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. The Architect's invoice shall be submitted in a format acceptable to the Owner, and shall show sufficient information to allow the Owner to determine the propriety thereof. At a minimum, each invoice shall state services completed during the billing period, amount due for Services performed during the billing period, amount previously paid, and agreed contract balance remaining. The Architect shall be paid in the time periods set forth in the Local Government Prompt Payment Act. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

~~(Insert rate of monthly or annual interest agreed upon.)~~

— per annum

~~§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§ 11.10.5 Owner reserves the right to recover from the Architect all or a portion of the costs associated with change orders issued to correct errors or work omitted in the construction documents prepared by the Architect. Consequential damages including any delay damages suffered by Owner, or which Owner may be liable, due to errors and omissions may be included in the recovery. In the case of omissions, Architect shall not be responsible for the direct cost of the construction contractor's Work to implement omitted Work to the extent that Architect demonstrates that, but for the omission, the cost of the omitted Work would have been fully included in the construction contractor's bid. Nothing in this paragraph (11.10.5) is intended to provide Owner or Architect with causes of action, defenses or measures of damages that it would not otherwise possess under applicable law.

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## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

None.

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- 1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- 2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:  
\_\_\_\_\_  
\_\_\_\_\_
- 3 Other documents:  
*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*  
\_\_\_\_\_  
\_\_\_\_\_

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

OWNER

ARCHITECT

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

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

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

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

# Oak Park and River Forest High School Construction Projects Long Range Plan

Revised 12/14/10 PZ

Exhibit A  
Commencement of construction 6-8-11  
Substantial Completion 8-13-11

Line #	Year	Description	Type of work <small>maintenance, instructional, vehicle, replacement, life safety, up grade, Project management</small>	Fund <small>O &amp; M Life Safety, Tent, shelter</small>		
					FY2011/2012	Comments and Clarifications
48	2011-2012	Press Box renovation, Ticket Booths and Fencing	Maintenance	O&M	\$ 60,000.00	Pricing reflects replacement in kind for press box. No allowance included for ticket booths or fencing. No elevator included.
2	2011-2012	Code upgrades Elevator new building - from 2010	Maintenance	O&M	\$ 84,000.00	Pricing based on quote received by OPRF.
52	2011-2012	LS Item A-18: <del>423, 424, 484, 442, 273, 274, 340, 396, 421</del> asbestos tile worn needs replaced. Replace with Frittile.	Life Safety	LS	\$ 140,000.00	Does not include rooms 173/174 which were completed in 2010. Assumes 25% floor fill, 9,000 sf tile. 184 and 212 were eliminated from this years life safety due to future plans
53	2011-2012	LS ITEM A-10: All 4th floor rooms that need ceiling and light replacement. Locations: Rooms 407, 408, 409, 410, 411, 413, 415, 417, 421, 423, 424, 425, 425A, 426, 427, 427A, 428, 429, 430, 431, 433, 435, 437, 438, 439, 440, 472, 473, 474, 475, 476, 477, 478, 481, 482	Life Safety	LS	\$ 444,629.00	Corelite pendants in classrooms; recessed indirect lights in corridors; new diffusers. Added cost for additional rooms. Murals on walls in 475
53A	2011-2012	New HVAC to rooms: 419A, 420, 421, 423, 424, 425, 425A.	Maintenance	O&M	\$ 177,000.00	Need scope description and estimate.
54	2011-2012	LS ITEM A-11: All 3rd floor rooms that need ceiling and light replacement. Locations: Rooms 309, 310, 311, 313, 315, 320, 321, 326, 329, 330, 331, 333, 335, 337, 390, 391, 399.	Life Safety	LS	\$ 225,000.00	Corelite pendants in classrooms; recessed indirect lights in corridors; new diffusers. Added cost for additional rooms. Save existing cabinets in 390 and 391 that were on life safety to Corelite pendants in classrooms; recessed indirect lights in corridors; new diffusers.
55	2011-2012	LS ITEM A-12: All 2nd floor rooms that need ceiling and light replacement. Locations: Rooms 229, 230, 231, 233, 235, 239, 290, 291.	Life Safety	LS	\$ 72,000.00	Corelite pendants in classrooms; recessed indirect lights in corridors; new diffusers.
56-2011	2011-2012	LS ITEM S P-5.1, P-5.2, P-5.3, P-5.4 (phase 2): 1907-1962 building - replace domestic hot water piping - (mains that support 2012 bathroom work)	Life Safety	LS	\$ 216,000.00	Budgeted for \$180K per year for 5 years plus fees and GC's. Need to define scope for each year to be within budget parameters. North boys and girls bathrooms only
57	2011-2012	LS ITEM P-6: (phase 2) replace <del>saniitary drains @ 1907 - 1924</del> (phase 2) replace <del>3rd and 4th floor</del> Replace 8" waste on DP2.1 and P2.1 excluded from 2010 work	Life Safety	LS	\$ 48,000.00	Drains at loading dock; pricing based on actual field camera results.
58	2011-2012	2nd floor corridor Asbestos abatement to Frittile. Location: 2nd floor - East-West corridor in 1907 Building. North-South corridor from Room 229 - 239; North-South corridor from Room 215 - Stairs.	Maintenance	O&M	\$ 188,000.00	
61	2011-2012	Air handlers 4: #2, 3, 4 and S3	Maintenance	O&M	\$ 847,000.00	Pricing based on bids from 2010.
63	2011-2012	LS item A-19 2nd floor hallways, 67 addition Ceilings and lights	Life Safety	LS	\$ 651,000.00	Includes 41,000 SF
		Sub-total			\$ 3,152,629.00	
		Contingency (use 10%)			\$ 315,262.90	
	2011-2012	Total			\$ 3,467,891.90	
		Total LS			\$ 1,976,291.90	

# **Oak Park and River Forest High School** **Construction Projects Long Range Plan**

Revised 12/14/10 rz

Line #	Year	Description	Type of work <small>maintenance, instructional, rehabilitate, replacement, life safety, life span, project management</small>	Fund <small>O &amp; M, Life Safety, Tech. Instruction</small>		
					FY2011/2012	Comments and Clarifications
		Total O & M			\$ 1,491,600.00	

	Total
FY 2011/2012	\$ 3,467,892
Total	\$ 3,467,892

# Insurance

[illegible]

### Insurance Coverage and Limits

These sample Certificates of Insurance summarize the insurance coverage and limits carried by Legat Architects.

## Summary Coverage

Professional Liability  
\$2 Million Each Claim  
\$4 Million Aggregate

General Liability  
\$2 Million General Aggregate  
\$2 Million Each Occurrence

Automobile Liability  
\$1 Million Combined Single Limit

Excess/Umbrella Liability  
\$5 Million Each Occurrence

Workers Compensation and  
Employers' Liability  
\$500,000 Each Accident

[illegible]

# Billing Rates

## FIRM NAME

## ROLE

### Legat Architects

### Architects/Planners

<u>Classification</u>	<u>Hourly Rate</u>
Principals	\$200.00
Staff Architects	\$180.00
Associates	\$115.00
Intern	\$75.00
Clerical	\$55.00

### AMSCO Engineering

### MEP Engineering

<u>Classification</u>	<u>Hourly Rate</u>
Principals	\$167.50
Project Engineer	\$155.00
Engineer/Designer	\$150.00
Draftsman	\$75.00
Clerical	\$75.00

### Larson Engineering

### Structural Engineering

<u>Classification</u>	<u>Hourly Rate</u>
Officer	\$195.00
Principal	\$167.00
Associate	\$155.00
Project Manager	\$124.00
Project Engineer	\$108.00
Design Engineer	\$100.00
E.I.T.	\$92.00
CADD Technician	\$77.00

### Pekron Consulting, Inc.

### Environmental Engineering

<u>Classification</u>	<u>Hourly Rate</u>
Project Designer	\$85.00
Project Management	\$65.00
Sample Analysis	
- Polarized Light Microscopy	\$15.00/sample
- Phase Contrast Microscopy	\$15.00/sample
- Transmission Electron Microscopy	\$125.00/sample



***Oak Park and River Forest High School  
District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education

FROM: Robert Zummallen

DATE: February 15, 2011

RE: RFP Construction Management Contract

---

**BACKGROUND**

Over the last 18 years, the school district has worked under the concept of a design build team to perform as the architect and construction management firm for all construction projects. The District has chosen to separate these services into two categories; 1) design criteria provided by an architectural company and 2) a professional construction service provided by a construction management company.

**SUMMARY OF FINDINGS**

A selection committee, which consisted of Nate Rouse, Principal; Robert Zummallen, Director of Building and Grounds; Jack Lanenga, former Assistant Superintendant of Operations, current Director of Student Information Services and Ed Kras, Asst. Director of Building and Grounds, reviewed RFP's from construction management firms. The committee chose the following as the top three to be interviewed; Henry Bros Co., Gilbane Bldg. Co. and James McHugh Construction Co. (See attached interview scores and cost spreadsheet).

The committee is recommending that the Board of Education accept Henry Bros Company as the Construction Management Firm based on their proposal and responses given during the interview process. Henry Bros has worked on several school projects including the new Lincoln Way West High School (\$94,000,000.00) and Lincoln Way North High School (\$90,000,000.00).

**RECOMMENDATIONS**

To accept Henry Bros Company as the Construction Management Firm at the February 15<sup>th</sup> Special Board of Education meeting.

[illegible]

***Oak Park and River Forest High School  
District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education  
FROM: Cheryl L. Witham  
DATE: February 15, 2011  
RE: Construction Management Contract

---

**BACKGROUND**

Provided is a draft copy of the proposed Construction Management Contract.

**SUMMARY OF FINDINGS**

Attorney Ken Florey will be present at the meeting to explain the contract and answer questions.

**RECOMMENDATIONS (OR FUTURE DIRECTIONS)**

None at this time

# AIA® Document A134™ - 2009

**Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

AGREEMENT made as of the « » day of « » in the year « »  
(In words, indicate day, month and year.)

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

« » « » Oak Park and River Forest High School District 200  
« »

and the Construction Manager:  
(Name, legal status and address)

« » « »  
« »

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

«Project Name»  
« » 2011 Renovation

The Architect:  
(Name, legal status and address)

« » « » Legal Architects  
2015 Spring Road, Suite 175  
Oak Brook, Illinois 60523  
« »

The Owner's Designated Representative:  
(Name, address and other information)

« »  
« »  
« »  
« »  
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The Construction Manager's Designated Representative:  
(Name, address and other information)

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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.

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

AIA Document A201™-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.

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The Architect's Designated Representative:  
(Name, address and other information)

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The Owner and Construction Manager agree as follows.

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### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 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 the 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. ~~Upon the Owner's approval of the Control Estimate, the Contract Documents will also include the documents described in Section 2.2.4 and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.5.~~ The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.2.1 The Construction Manager has been engaged to provide professional construction management services because of its character, expertise, experience, education, depth of experienced personnel, and qualifications in dealing with projects of similar scope, complexity, and magnitude.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in an amended A201-2007, which document is attached hereto and incorporated as amended herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

#### § 4.4 Contract Sum, Contract Time and Changes in the Work

The Contract Sum is the actual Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee as defined in Section 5.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201-2007. The Contract Time shall be measured from the date of commencement of the Construction Phase as established pursuant to Section 2.3.1.2 of this Agreement. Changes in the Work shall be governed by Section 5.2 of this Agreement and not by Article 7 of A201-2007. If, however, the Contract Time has been established in accordance with Section 2.2.4.5, Article 7 of A201-2007 shall control adjustments to the Contract Time.

### **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

§ 2.0.1 The Construction Manager shall perform the services described in this Agreement. The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.0.2 The Construction Manager shall designate an authorized representative who shall have express authority granted by the Construction Manager to bind the Construction Manager with respect to all matters requiring the Construction Manager's approval or authorization. Construction Manager's representative shall have the authority to make representations on behalf of the Construction Manager concerning estimates and schedules, construction budgets, changes in the Work, and all other matters related to this Agreement.

§ 2.0.3 In addition to the other responsibilities set out below for pre-construction and bidding phases, the Construction Manager shall also perform the following tasks relative to Minority Owned Business Enterprises (MBE) and Female Owned Business Enterprises (FBE):

- a) The Construction manager will advise the Owner as to potential alternatives for increasing participation on the Project by MBE and FBE firms.
- b) If any of the alternatives are selected by the Owner, the Construction Manager will coordinate the planned use of increased MBE/FBE and labor goals throughout design, bidding, and construction phases.
- c) The Construction Manager will coordinate with the Project team (in the design phase) to recommend and review split bid packages, the divisions of work and how MBE/FBE firms and the labor force can meet the needs of those bid packages. Constructability of the project must not be compromised in the attainment of these goals.
- d) Construction Manager will ensure that the Instructions to Bidders and Bid Form shall require bidders to identify all MBE/FBE firms which the bidder contacted in order to solicit sub-bids.

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#### **§ 2.1 Preconstruction Phase**

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program (if any), schedule and construction budget requirements, each in terms of the other.

#### **§ 2.1.2 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities

and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: ~~submission of the Control Estimate; the components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.~~ All project schedules (including updates) shall be a Critical Path Method (CPM) schedules.

§ 2.1.2.1 The Construction Manager shall assist the Owner and Architect in preparing Construction Contracts and advise the Owner on the acceptability of sub-tier subcontractors and material suppliers proposed by Subcontractors. The Construction Manager shall submit for review and approval to Owner, or its attorneys if designated by Owner, all agreements and conditions prepared for submission to bidders prior to release of bidding information.

#### **§ 2.1.4 Phased Construction**

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

#### **§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 2.2. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

#### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.6.1 Owner is a public entity bound by 110 ILCS 805/3-27.1 and is required to publicly bid all construction contracts and all construction contracts shall be awarded to the lowest responsible responsive bidder. Once the lowest responsible responsive multiple prime trade bidders, (hereinafter referred to as "Subcontractors") are identified, Owner shall assign the trade contracts to Construction Manager.

The trade contracts shall incorporate substantially the following provisions:

Though this Contract has been awarded by the Owner after advertisement for bids, upon award of the Contract by the Owner, the Owner shall be deemed to have assigned and set over portions of its rights and interest in this Agreement to [Construction Manager], which is identified herein as the Contractor.

By submitting its bid, the Contractor shall be deemed to have consented to the aforesaid assignment and to have agreed to become an assigned subcontractor to the Contractor.

Upon assignment, the Subcontractor shall become a subcontractor of the Contractor pursuant to this Agreement and, except as identified within this Agreement and as provided by law, will no longer have any rights under the contract against the Owner, but all of its rights under this Agreement shall be against the Contractor.

§ 2.1.6.2 Construction Manager shall prepare all bid invitations, instructions to bidders, and general and supplementary conditions. Drawings and technical specifications shall be provided by the Architect. During



preparation of the Construction Documents by the Architect, the Construction Manager shall review said Construction Documents to ensure consistency with the bid documents prepared by the Construction Manager.

§ 2.1.6.2.1 Construction Manager will ensure that the Instructions to Bidders require the bidders to contact at least three MBE/FBE firms in order to solicit bids, or in the alternative, to explain on the Bid Form why three firms could not be contacted. Additionally, Construction Manager will ensure that the Bid Form shall provide space for the bidder to identify the firms contacted, or explanation why firms were not contacted.

§ 2.1.6.3 Prior to advertisement for bids, Construction Manager shall provide all contractor or subcontract agreements to the Owner's attorneys for review and comment.

§ 2.1.6.4 Construction Manager shall conduct pre-bid meetings with interested bidders in accordance with publicly announced scheduled meetings.

§ 2.1.6.5 The Owner shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of contracts or rejection of bids.

§ 2.1.6.6 The Subcontract documents prepared by Construction Manager shall require full compliance with all state and local laws.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the Owner's approval of the Control Estimate, advertisement for bids, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the Owner's approval of the Control Estimate, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. ~~The Construction Manager, however, does not warrant or guarantee estimates and schedules, including the Control Estimate and the estimated date of Substantial Completion, except as provided in Section 2.2.4.5.~~ The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

#### **§ 2.2.11 PERMITS**

The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Subcontractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

#### **§ 2.2 Control Estimate**

§ 2.2.1 At the completion of the Construction Documents by the Architect, and before advertisement for bids, a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction

Manager's Fee and shall include those items set forth in Section 2.2.4 below. When the Control Estimate is acceptable to the Owner, the Owner shall upon request by the Construction Manager, acknowledge it in writing.

§ 2.2.2 The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Construction Manager's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 2.2.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ 2.2.4 The Control Estimate shall include

- 1 a list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- 2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- 3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and the Construction Manager's Fee;
- 4 the anticipated date of Substantial Completion upon which the Control Estimate is based; and a schedule for the issuance dates of the Construction Documents upon which the anticipated Substantial Completion date relies; and
- 5 a statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of A201-2007.

§ 2.2.5 The Owner shall authorize the Architect to incorporate the agreed-upon assumptions and clarifications contained in the Control Estimate. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Drawings and Specifications.

§ 2.2.6 In the event that any portion of the Control Estimate materially differs (i.e., by more than 10% of the bid or applicable portion thereof) from the lowest bona fide bid for the respective portion of the Work covered by that portion of the Control Estimate, the Construction Manager shall:

- a) If the Owner chooses to accept the bid, compensate the Owner for additional design costs to modify the scope of Work to bring the cost materially within the cost set out in the Control Estimate; and
- b) Negotiate respective change orders with the respective Subcontractors to incorporate the aforesaid design changes, at no additional charge to the Owner; or
- c) If the Owner chooses to reject all bids and re-bid, compensate the Owner for additional design costs to modify the scope of work for re-bidding; and
- d) Administrate re-bid of the affected portions of Work at no additional charge to the Owner.

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## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's approval of the Control Estimate or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.1.3 Prior to commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work.

### § 2.3.2 Administration

§ 2.3.2.1 All trade Work shall be performed by Subcontractors, as assigned as set forth elsewhere in this Agreement. If the Construction Manager has reasonable objection to any Subcontractor who is considered the lowest responsive bidder, it shall be the burden of Construction Manager to present demonstrative evidence that the bidder is not responsible. The Construction Manager shall not "self perform" any trade Work. These portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus-a-fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee.

§ 2.3.2.3 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall prepare and regularly update no less than once per month a Construction Schedule utilizing a Critical Path Method (CPM), or other Owner pre-approved scheduling method, which incorporates the activities of the Subcontractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, Product Data and Samples and delivery of products requiring long lead time and procurement. Additionally, the schedule shall be in accordance with applicable Sections of A201™-2007, as amended, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.3.2.7 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Subcontractors for apparent compliance with subcontract requirements. The Construction Manager shall transmit to the Architect those submittals which have been reviewed by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Contractors. The Construction Manager shall receive and process all other submittals required by the Construction Documents, including certified payrolls, work plans, safety plans, periodic schedule updates, and the like.

§ 2.3.2.7.1 The Construction Manager shall create and maintain a log of all submittals showing, at a minimum, the dates of submittal, review, and return, disposition, and description.

§ 2.3.2.8 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.5 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.96 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

#### **§ 2.4 Professional Services**

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 2.5 Hazardous Materials**

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases. Construction Manager shall provide immediate written notice to the Owner and Architect if the Construction Manager discovers the existence of any and all hazardous material, including, but not limited to any lead or lead based material and asbestos, asbestos-related products including the extent and location of same. Construction Manager shall not be responsible for the removal, encapsulation, transportation or disposal of any hazardous material.

#### **§ 2.5 Hazardous Materials**

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.6 CONSTRUCTION MANAGER STAFFING Construction Manager shall staff the Project. Construction Manager shall maintain one competent full-time superintendent at the Project site to coordinate and provide supervision of the Work and progress of the Subcontractors on the Project who shall devote full-time to the Project and who, so long as they remain in the employ of Construction Manager or any subsidiary or affiliate thereof, shall be removed from the Project except with the prior written consent of the Owner. If any such individual is no longer employed on the Project pursuant to this paragraph, Construction Manager shall propose to Owner the names of other individuals as substitutes. No person shall be employed on the Project as to whom Owner has reasonable objection. If Owner notifies Construction Manager that it has reasonable objection to any such individual, Construction Manager shall remove such person from the Project and propose substitutes to Owner for Owner's approval.

§ 2.7 CONTRACTOR INSURANCE AND SURETY DOCUMENTS Construction Manager shall secure Certificates of Insurance, as well as Performance and Payment Bonds, for each of the Subcontractors immediately upon award of the Contract and verify conformance of same with the Contract Documents prior to allowing the Subcontractors onto the Site. Insurance of Subcontractors shall name Owner, Construction Manager, and Architect as "Additional Insureds". Copies of same shall be transmitted to the Owner and Architect before Subcontractors may commence work on the project.

#### **§ 2.8 SCHEDULE**

§ 2.8.1 Time is of the essence of this contract. Construction Manager, with the Owner's approval shall establish the Construction Schedule. It is the duty of the Construction Manager to schedule, sequence and coordinate the performance of the Subcontractors on the Project so that completion shall be in accordance with the Construction Schedule.

§ 2.8.2 The Construction Schedule shall commence with the notice to proceed, and shall schedule the Subcontractors' Work using a Critical Path Method or other scheduling methodology approved by Owner. Construction Manager shall update the Project Construction Schedule on a monthly basis to show current and forecasted progress and completion. A copy of each schedule shall be transmitted to the Owner, Architect and each Subcontractor. Additionally, Construction Manager shall develop a look-ahead schedule for discussion at each weekly construction coordination meeting. The weekly look-ahead shall, at a minimum, show the schedule for the past week and upcoming two weeks.

§2.8.3 If a monthly Project Schedule update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner.

§2.9 COST RECORDS Construction Manager shall verify and maintain in accordance with generally accepted accounting principles detailed cost accounting records on authorized work performed on the basis of unit costs, actual costs for labor and materials and other bases showing all costs, and shall maintain and transmit to Owner all receipts, invoices, purchase orders, canceled checks, bills of lading and other documents and evidence of payment or indebtedness to support such records as Owner may request. Construction Manager shall audit, verify and recommend approval of all Change Orders submitted by Subcontractors. Construction Manager shall afford the Owner access to these records and preserve them for a period of three (3) years after final payment.

#### §2.10 CONTRACT CLARIFICATIONS

§2.10.1 The Construction Manager shall transmit to the Architect requests for interpretations, information, or clarification of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise.

§ 2.10.2 The Construction Manager shall create and maintain a log of all requests showing, at a minimum, a description of the request, date of submission, response, and date of response.

#### § 2.11 SUBCONTRACTOR CHANGE ORDERS

§2.11.1 Without invalidating this Agreement or any Subcontract, and without notice to any respective surety, Owner may make changes to the Subcontractor contracts. The Construction Manager shall review requests for changes, assist in negotiating Subcontractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the modifications to the Documents. For each change which is anticipated to be paid by lump sum, Construction Manager shall prepare a detailed estimate for the respective Change Order or Construction Change Directive initiated. Construction Manager shall compare the detailed value estimate with the submittal of the Subcontractor. Construction Manager shall require that each Subcontractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Change Order or Construction Change Directive price and/or schedule adjustment. Construction Manager shall submit a detailed recommendation for the Owner's review and approval for each Change Order or Construction Change Directive. Construction Manager shall systematically maintain all documentation supporting each change and upon completion of the project turn over such documentation to the Owner. For the purposes of this paragraph, it is anticipated that only changes in which schedule considerations allow the change order price to be agreed prior to the performance of the change order work will be paid lump sum. It is further anticipated that changes in which the change order price must be agreed after the change order work is completed will be paid time and material reimbursable.

§2.11.2 The Construction Manager shall create and maintain a log of all requests for changes showing, at a minimum, date of submission, description of request, requested change in contract price, requested change in contract time, and disposition.

§ 2.11.3 The Construction Manager shall create and maintain a log of all approved change orders showing, at a minimum, dates of approval, description, reason for change, agreed price of change, and agreed change of contract time.

#### § 2.12 CLAIMS

§2.12.1 The Construction Manager shall assist the Owner and Architect in the review, evaluation and documentation of Claims. The Owner shall provide a written recommendation to the Owner suggesting the proper disposition of each claim. Construction Manager shall require that each Subcontractor submit such invoices, purchase orders, labor and material records, and schedule analyses as is necessary to verify the accuracy of the Claim cost and schedule impact. Construction Manager shall submit a detailed recommendation for the Owner's review and approval for each Claim.

§ 2.12.2 The Construction Manager shall create and maintain a log of all Claims showing, at a minimum, date of submission, description of claim, demanded change in contract price, demanded change in contract time, and disposition.

§ 2.13 EQUITABLE EXTENSION OF TIME AND NO DAMAGE FOR DELAY To the extent that Construction Manager's Services are delayed by the Owner or causes not under control of Construction Manager, the Contract Time shall be equitably extended. Such extension of the Contract Time shall be Construction Manager's sole and exclusive remedy.

#### § 2.14 SITE SAFETY

§ 2.14.1 Construction Manager shall hold regular safety meetings at the site at least weekly with all Subcontractors. Construction Manager shall maintain all required safety records and logs. The Construction Manager shall review, approve and coordinate the safety programs developed by each of the Subcontractors. Neither the Owner, Construction Manager, nor the Architect is responsible for Site Safety. The individual subcontracts shall provide that the subcontractors are solely responsible for the means and methods of prosecuting their respective work. The foregoing shall not relieve Subcontractors of their responsibility for site safety for their work and the work performed by their personnel.

#### § 2.15 QUALITY CONTROL

§ 2.15.1 Construction Manager shall inspect the Work of Subcontractors for defects and deficiencies in the Work in order to assure compliance with the requirements of the Contract Documents. As appropriate, the Construction Manager shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Construction Manager, in consultation with the Architect and Owner, may reject Work which does not conform to the requirements of the Contract Documents.

§ 2.15.2 The Construction Manager shall assist the Owner in obtaining from the responsible Subcontractor correction of all portions of the project which do not comply with the Contract Documents or do not conform with good workmanlike performance.

§ 2.16 AS BUILT DOCUMENTS Construction Manager shall obtain data from Subcontractors and maintain a current set of accurate As Built Drawings and Specifications clearly marked to show reported actual changes during construction. Construction Manager shall transmit a copy of all As Built drawings and specifications to Architect for the preparation of final As Built Documents. Construction Manager shall periodically (not less than monthly) review Subcontractors' data to verify that they are recording information sufficient to allow preparation of the As Built documents.

§ 2.17 SUBMISSION OF PROJECT DOCUMENTS Prior to final payment at the completion of the Project, the Construction Manager shall inventory and turn over to the Owner one copy of the following: Record/As Built Drawings and Specifications prepared by the Architect, the daily log, progress reports, project manual, field orders, change orders, requests for changes, requests for information, claims, Subcontractor pay applications, communications, submittals, and all other Construction Documents.

§ 2.18 OPERATIONS AND MAINTENANCE TRAINING AND MANUALS Construction Manager shall arrange and schedule operating and maintenance training on mechanical, electrical and other systems for Owner's personnel by factory authorized representatives commencing upon start-up and the commissioning of each system prior to substantial completion. Construction Manager shall receive all operating and maintenance manuals from Subcontractors, and, along with the Architect, shall review for completeness, clarity, and conformance with the respective contract documents. After all operations and maintenance manuals are received and approved, but no later than turnover of operations to Owner personnel, Construction Manager shall transmit all approved operations and maintenance manuals to the Owner.

§ 2.19 PERFORMANCE AND PAYMENT BONDS Construction Manager shall obtain payment and performance bonds in accordance with Article 11 of the General Conditions.

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## ARTICLE 3 OWNER'S RESPONSIBILITIES

### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the Owner's approval of the Control Estimate, or within seven days of receiving the Owner's written acknowledgment required by Section 2.2.1, the Construction Manager 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 Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager 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 Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, when requested by the Construction Manager, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 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 surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid

unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 3.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### **§ 3.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™ 2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## **ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

### **§ 4.1 Compensation**

**§ 4.1.1** For the Construction Manager's Preconstruction Phase services, ~~the~~ The Owner shall compensate the Construction Manager as follows:

The Construction Manager will be compensated for all items depicted on the Cost Assignment (attached hereto as Attachment ) as being included in "CM Fee," "CM Reimbursable," and "Direct Cost of the Work." The portions of Construction Manager's compensation shall be calculated and paid as follows:

1. Construction Manager's Fee shall be percent ( % ) of the final cost of construction as its Construction Services Fee. The Construction Services Fee compensates for overhead and profit. The Fee shall be paid in equal a monthly lump sum amount of and 00/100 Dollars (\$ ).
2. Reimbursable Expenses: Reimbursable Expenses are expenses directly incurred by Construction Manager in connection with management of on-site activities. Such expenses shall be invoiced monthly. No mark-up will be allowed for Reimbursable Expenses.
3. Direct Cost of the Work as enumerated in Article 6 herein: Direct Cost of Work includes work performed by trade contractors. Construction Manager shall be compensated for the Direct Cost of Work on a monthly basis. No mark-up will be allowed on the Direct Cost of Work.

**§ 4.1.2** For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: ~~(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)~~

«—»

**§ 4.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within ~~«—»~~ ( « — » ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 4.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### **§ 4.2 Payments**

**§ 4.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

**§ 4.2.2** Payments are due and payable upon thirty days following presentation of the Construction Manager's invoice, unless Owner properly objects to the invoice, or portion thereof within said thirty days. All interest on improperly paid invoices shall be calculated in accordance with the Illinois Local Government Prompt Payment Act. Amounts unpaid ~~«—»~~ ( « — » ) days after the invoice date shall bear interest at the rate entered below, or in the

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absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

~~(((---)))~~

#### ARTICLE 5 - COMPENSATION FOR CONSTRUCTION PHASE SERVICES

~~§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.~~

~~§ 5.1.1 The Construction Manager's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)~~

~~(((---)))~~

~~§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:~~

~~(((---)))~~

~~§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~(((---)))~~

~~§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ~~(((---)))~~ percent (~~(((---)))~~ %) of the standard rate paid at the place of the Project.~~

~~§ 5.1.5 Unit prices, if any:~~

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

Item	Units and Limitations	Price per Unit (\$0.00)
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#### § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Construction Manager's compensation on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

#### § 5.2 Changes in the Work

§ 5.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment

§ 5.2.2 Increased costs for the items set forth in Sections 6.1 through 6.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 5.1.2.

~~§5.2.4 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work.~~

### § 6.1 Costs to Be Reimbursed

**§ 6.1.2** Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost.

**§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops:**

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

~~§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.~~

### § 6.3 Subcontract Costs

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**§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

**§ 6.6 Miscellaneous Reimbursable Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

~~§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.~~

~~§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

~~§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, or arising due to the fault of Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. Construction Manager shall obtain approval for expenditures for legal services prior to incurring expenses. At Owner's option, the Construction Manager shall assign its rights and liabilities in any legal action relating to this Agreement to the Owner. Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

~~§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.~~

#### § 6.7 Other Costs and Emergencies

~~§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved by Change Order with the Owner. Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.~~

~~§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.~~

~~§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.~~

~~§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.~~

#### ~~§ 6.8 Costs Not to Be Reimbursed~~

~~§ 6.8.1 The Cost of the Work shall not include the items listed below:~~

- ~~1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 1.1;~~
- ~~2 Expenses of the Construction Manager's principal office and offices other than the site office;~~
- ~~3 Overhead and general expenses, except as may be expressly included in Sections 6.1 through 6.7;~~
- ~~4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;~~
- ~~5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;~~
- ~~6 Any cost not specifically and expressly described in Sections 6.1 through 6.7; and~~
- ~~7 Costs for services incurred during the Preconstruction Phase.~~

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and

amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

#### § 7.1 Progress Payments

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

§ 7.1.1.1 The Owner shall withhold from each payment, except Final Payment, ten percent of Construction Manager's Fee as retention. All of retention shall be paid as part of Final Payment.

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

« »

§ 7.1.3 Upon receipt of a properly submitted Application for payment, payment shall be made as provided in the Illinois Local Government Prompt Payment Act. 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 Construction Manager 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.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or

Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Cost of the Work, except that the Construction Manager's Fee and items to be reimbursed shall be shown as single separate items. 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 Construction Manager's Applications for Payment. Applications for Payment shall show the Cost of the Work actually incurred by the Construction Manager through the end of the period covered by the Application for Payment and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment.

§ 7.1.6 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. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take the Cost of the Work as described in Section 6.1.1;
2. Add the Construction Manager's Fee, less retainage of ~~( $\llcorner$ )~~ percent ( ~~$\llcorner$~~  %). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the preceding Section 7.1.6.1 at the rate stated in Section 5.1.1; or if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
3. Subtract retainage of ~~( $\llcorner$ )~~ percent ( ~~$\llcorner$~~  %) from that portion of the Work that the Construction Manager self-performs;
4. Subtract the aggregate of previous payments made by the Owner;
5. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
6. Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

§ 7.1.7 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Construction Manager's Fee and Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. The Construction Documents shall depict that retention of ten percent shall be held from Construction Manager's Fee and from each Subcontractor Application for Payment, and such retention shall be paid as part of Final Payment.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

#### § 7.1.11 CONSTRUCTION MANAGER'S PAYMENT APPLICATIONS

§ 7.1.11.1 Construction Manager shall submit monthly Applications for Payment in a format acceptable to the Owner. The statements shall be fully detailed so as to allow the Owner to determine the propriety of the statement.

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At a minimum, monthly statements shall detail the amount due for the current period, subcontractor costs, agreed change orders or modifications, previous amounts billed, reimbursable expenses, and balance of contract outstanding.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager'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;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

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

§ 7.1.9 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager'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;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

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§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to

request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

#### ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall 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)

#### ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 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 Construction Manager 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)*

*«As stated in General Conditions »*

#### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

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

#### ARTICLE 10 TERMINATION OR SUSPENSION

##### § 10.1 Termination Prior to Owner's Approval of the Control Estimate

§ 10.1.1 Prior to the Owner's approval of the Control Estimate, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause

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User Notes:

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and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

**§ 10.1.2** In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

**§ 10.1.3** In the event of termination of this Agreement pursuant to Section 10.1.1, after the commencement of the Construction Phase but prior to the Owner's approval of the Control Estimate, the Owner shall pay to the Construction Manager under Section 10.1.2 an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

## **§ 10.2 Termination Subsequent to the Owner's Approval of the Control Estimate For Cause**

**§ 10.2.1** The Owner may terminate this Agreement for Cause for the reasons, and in the manner set out in Section 14.2 of the General Conditions. Subsequent to the Owner's approval of the Control Estimate, the Contract may be terminated as provided in Sections 14.1.1, 14.1.2 and 14.2.1 of A201-2007. The provisions of Article 14 of A201-2007 do not otherwise apply to this Section 10.2.

**§ 10.2.2** In the event of such termination by the Owner, the amount payable to the Construction Manager shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement, less any compensation that may be awarded to the Owner pursuant to Article 9.

**§ 10.2.3** In the event of such termination by the Construction Manager, the amount payable to the Construction Manager shall be in accordance with Sections 10.1.2 and 10.1.3 of this Agreement, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

**§ 10.2.4** In addition to the Owner's right to terminate this Agreement for cause as provided in Section 14.2.1 of A201-2007, the Owner may terminate this Agreement for convenience as provided in Section 14.4; however, the Owner shall then only pay the Construction Manager an amount calculated as follows:

- ~~1. Take the Cost of the Work incurred by the Construction Manager to the date of termination;~~
- ~~2. Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and~~
- ~~3. Subtract the aggregate of previous payments made by the Owner.~~

### **§ 10.3 Suspension**

The Work may be suspended for a period of thirty (30) days by the Owner as provided in A201™-2007, without an equitable adjustment. Upon lifting of a suspension in excess of thirty (30) days, the fee for Construction Management services and General Conditions shall be equitably adjusted.

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Control Estimate and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.2.4 of this Agreement.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201-2007.

§ 11.2 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager. Owner and Construction Manager acknowledge and agree that the obligations of the Construction Manager are solely for the benefit of the Owner and not intended in any respect to benefit the Architect, Subcontractors, or any other third parties.

§ 11.3 In case of conflict between this Agreement and any other document incorporated or referenced herein, this Agreement shall prevail, followed by the General Conditions, supplementary conditions, Owner's request for qualifications or proposal from Construction Manager, the drawings and specifications, and Construction Manager's proposal.

§ 11.4 The Construction Manager shall endeavor to keep the project free from mechanic's liens. In the event that the Owner is required to withhold money pursuant to a notice of lien or lien against public funds due to fault of the Construction Manager, the Construction Manager shall defend and hold harmless the Owner for all costs incurred, including attorneys' fees. The Construction Manager shall ensure that a similar provision is incorporated into the Subcontracts. In the event that liens are placed on the funds for this Project due to Construction Manager's fault, the Construction Manager shall indemnify the Owner for all resulting costs incurred due to the lien, including attorneys' fees. Construction Manager shall assure that similar language protecting the Owner and Construction Manager is included in the subcontract documents.

§ 11.5 Construction Manager acknowledges that this is a public works project governed by the Illinois Prevailing Wage Act. Construction Manager shall pay its laborers if any and assure the Owner that Subcontractors shall pay its laborers not less than the established prevailing rate of wages. 820 ILCS 130/1 *et seq.* Construction Manager shall comply with all reporting requirements of the Illinois Prevailing Wage Act. Similarly, the Construction Manager shall assure that all Subcontractors and sub-tier subcontractors comply with the reporting requirements of the Illinois Prevailing Wage Act.

§ 11.6 Construction Manager represents that it has in place a Sexual Harassment Policy in accordance with the Illinois Human Rights Act and shall assure the Owner that Trade Contractors shall have in place a Sexual Harassment Policy prior to commencement of work on the Project. 775 ILCS 5/1-105.

§ 11.7 Construction Manager represents that it does not discriminate in its hiring practices based upon race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service. Construction Manager shall assure the Owner that Trade Contractors shall not discriminate as set forth in this paragraph. 775 ILCS 5/2-1053; 44 Ill. Admin. Code Section 750 *et seq.*

§ 11.8 Construction Manager represents that it is in conformance with the Drug Free Workplace Act. 30 ILCS 580/1 *et seq.*

§ 11.9 Construction Manager certifies it is not barred from contracting as a result of bid rigging or bid rotation.  
720 ILCS 5/33 E-11.

**§ 11.102 Ownership and Use of Documents**

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.113 Governing Law**

This Agreement shall be governed by the law of the State of Illinois. Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.124 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Except for the assignment of the Subcontracts to Construction Manager, neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other. Except as provided in Section 13.2.2 of A201–2007, 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.

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, 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.

**§ 11.135 Other provisions:**

« None »

**ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 12.2** The following documents comprise the Agreement:

- .1 AIA Document A134–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, as amended and attached hereto.
- .4 AIA Document A134–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:

«—»

- .4 AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

«—»

- .5 Other documents:  
(List other documents, if any, forming part of the Agreement.)

«—»

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

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

\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

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

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

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

## General Conditions of the Contract for Construction

for the following PROJECT:  
(Name and location or address)  
2011 Renovation

THE OWNER:  
(Name and address)  
Oak Park and River Forest High School District 200  
201 North Scoville  
Oak Park, Illinois 60302

THE ARCHITECT:  
(Name and address)  
Legat Architects  
2015 Spring Road, Suite 175  
Oak Brook, Illinois 60523

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

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

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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 included in the Project Manual, 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, or (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 all of the Contractor's obligations under the Contract Documents, including 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, if any, 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.

~~§ 1.2.4 In event of conflict between any of the Contract Documents or between them and the applicable laws, rules, regulations, codes and ordinances, the provisions of the applicable laws, rules, regulations, codes and ordinances shall govern. In the event of conflict between the Contract Documents and the applicable laws, rules, regulations, codes and ordinances, the provisions of the applicable laws, rules, regulations, codes and ordinances shall govern.~~

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### § 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 Owner's, 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 Unless provided in the Agreement, 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. ~~The Contractor shall provide information or other assistance as the Architect or Owner may request in connection with obtaining permits.~~

§ 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. ~~The Owner's right to stop the Work shall be a condition to, and not a restriction on, the Contractor's right to stop the Work under the Contract Documents.~~

#### § 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 or ~~any other construction schedule~~, and fails within a ~~thirty~~ 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 (including attorneys' fees and consequential or incidental 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 within thirty (30) days after request.

#### § 2.5 OWNER'S RIGHT TO ABORT

~~§ 2.5.1. The Contractor shall keep full and accurate records of all labor and material costs incurred and kept on file in connection with the performance of the Work, which records shall be made available by the Contractor to the Architect upon request during performance of the Work and until three years after final payment. In addition, the Contractor shall make a accounting of all subcontracts relating to the Work then and after all subcontracts will keep a record of costs incurred and items billed in connection with each subcontract. All such records shall be maintained by the Owner or its authorized representative during performance of the Work and until three years after Subcontractor's final completion.~~

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## 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. The Contractor is an independent contractor, and shall not be deemed an agent of the Owner for any reason.

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

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in strict 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.~~ 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, correlated personal observations with requirements of the Contract Documents, and has satisfied itself as to the nature and location of the work, the general and local conditions, including those bearing upon access (including partial or total restriction in access), transportation, disposal, staging, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, ground water table or similar physical conditions of the ground, the character, quality and quantity of existing conditions to be encountered, the character of equipment and facilities needed prior to and during the prosecution of the work and all other matters which can in any way effect the work or the cost thereof under this Contract. Any failure by the Contractor to acquaint itself with all the available information concerning these conditions will not relieve the Contractor from any obligations with respect to his Contract.

§ 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 latent errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any patent errors, inconsistencies or omissions ~~discovered by or made known to the Contractor~~ as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

~~§ 3.2.5 In all cases of interference of the Work with existing facilities, the Contractor shall adjust the same and notify the Architect of any changes relating to such existing facilities. Any condition in the Work and the existing facilities~~

which would have been mitigated by the Contractor's obligation to seek the dimensions of dimensions and details shall be promptly notified by the Contractor at its own expense.

### § 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.

§ 3.3.4 The Contractor shall coordinate instructions for any external authorities having jurisdiction over the Work.

§ 3.3.5 No inspection performed or to be performed by the Owner or Architect shall be a waiver of any of the Contractor's obligations hereunder.

### § 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.

§ 3.4.4 The Contractor shall not accept or continue to use, store, transport, stored, or controlled substances, whether inside or outside of buildings or structures. Removal or removal of the foundation or adjacent to the City or property shall be adequate grounds for the Owner to invoke its right to have such offending persons removed from Work on the site at no additional cost to the Owner.

§ 3.4.5 The Contractor and any subcontractors shall be required to conform to labor law, of the State and United States and any amendments thereto and to other laws, ordinances and local codes/morals applicable thereto. It shall be the duty of the Contractor to ensure on the work to ensure that all persons hired directly or indirectly employed by him, and who shall be the owner may establish for conduct of such person or by the premises. The Contractor shall have a reasonable representation on the person throughout the Work and Subcontractor's completion of the Work, and will limit completion of the Work unless they at that time be aware in writing.

§ 3.4.6 The Contractor shall, if applicable, not less than the minimum local Council or Board shall, through, workshop, and mechanism in of performance of Work under the Contract or under to part of the Council.

### § 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 be of good quality and shall strictly 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 on site. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. ~~The superintendent shall be subject to approval by the Owner and shall not be replaced without the prior written consent of the Owner. The Owner shall have the right in reason that such personnel require the superintendent if and/or performance is not satisfactory to the Owner.~~

**§ 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.

**§ 3.10.1.1** The Contractor's construction schedules shall be in a bar chart format and shall depict, at a minimum, activity, identification and duration, critical path, free float, total float, early start, early finish, late start, and late finish.

~~§ 3.10.1.1 The bars on the construction schedules will not be deemed conclusively binding to the Contractor per Owner. Any other shall be available in other parties needed.~~

**§ 3.10.1.2** No less than once per month, the Contractor shall submit an updated construction schedule. The updated construction schedule shall depict actual start and completion dates for work commenced and, if appropriate, work completed. Additionally, the updated construction schedules shall depict updated estimates of anticipated commencement and completion dates for all upcoming work.

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**§ 3.10.1.3** Submission of the initial construction schedule and monthly schedule updates shall be absolute prerequisites of certification of the Contractor's application for payment.

**§ 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. ~~Should the Contractor fail to adhere to the approved construction schedule for any reason, the Contractor shall immediately, at its own expense, take such measures as are necessary to fully carry out such duties, including addition of personnel and/or equipment, overtime, and/or additional shifts. The Owner shall be entitled to rely on Contractor's schedules for coordination of its own activities, as well as the activities of other contractors working at the Project site or on the Project.~~

### **§ 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 (all collectively referred to herein as "Record Documents"). 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.

§ 3.11.1 The Contractor will make the Record Documents available for inspection by the Architect upon reasonable notice. Adequate maintenance of the Record Documents shall be a prerequisite to certification of the Contractor's application for payment.

### **§ 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. The Contractor shall submit Product Data for all equipment and materials incorporated into the finished work. 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.

Upon completion of the Work, the Contractor shall remove all materials, tools, equipment, machinery, vehicles and surplus materials from the Project site and leave the Project site in a clean and orderly condition. The Contractor shall be responsible for the removal of all materials, tools, equipment, machinery, vehicles and surplus materials from the Project site and leave the Project site in a clean and orderly condition.

§ 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 which 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. If requested by the Architect, all requests for information shall be submitted to the Architect in a format acceptable to the Architect.

## 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 pursuant to Section 15.1 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 Contractor has suspended for more than 30 days, the Subcontractor's complete responsibility shall be shifted to the Owner, inasmuch as the Contractor is not responsible for the subcontract.~~

~~§ 5.4.3 Upon such assignment, the Contractor shall be relieved of all obligations under the subcontract, and the Owner shall be responsible for the subcontract. If the Owner assigns the subcontract to a subcontractor or other party, the Contractor shall be relieved of all 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, the Contractor shall be relieved of all obligations under the Contract Documents.~~

and to have the same rights that apply to the third parties under the conditions of the Contract Documents, without prejudice to the remedies available to the third parties under the Contract Documents.

## § 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. Alternatively, the Contractor shall pay separate contractors directly for such costs. The separate contractors 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. For the purposes of facilitating this Section, the Contractor and separate contractors shall be deemed third party beneficiaries to each other's respective contracts with the Owner.

§ 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, 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 The Owner may, without invalidating the Contract and without notice to the surety, direct changes in the Work. 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.

§ 7.1.4 Notwithstanding any other provision to the contrary in the Contract Documents, upon receipt of a direction for Change, the Contractor shall immediately implement the Change into the Work.

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§ 7.1.5 No Change Order shall be approved unless preceded by written direction for Change is provided by the Owner or Architect. This requirement cannot be waived. There shall be no implicit or constrictive change order.

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### § 7.2 CHANGE ORDERS

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

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

§ 7.2.2 No payment for change in the Work shall be made until such change has been memorialized in an executed Change Order and the Change has been implemented into the Work. Partial payments on partially implemented changes shall be paid similarly as partial payments on base contract work.

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§ 7.2.3 Contractors shall be permitted the following markups for changes orders. Additional markup for insurance or bonds will not be allowed. All change order requests must be submitted with the following backup information or they will not be reviewed by the Architect or Owner. Provide man, material and labor quantities, material unit costs, labor rates, and any other substantiating data to explain the change order amount.

Permitted markup for Change Orders:

Additive Change Order: 10%

Deductive Change Order: 5%

### § 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 for the purposes of defining the change and how payment shall be calculated, but not for the purpose of approving payment.

§ 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 (i.e., by more than 25%) 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 may 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 stated in § 7.2.3) 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 and Final Completion within the Contract Time. Unless provided elsewhere in the Contract Documents, Final Completion shall be completed within thirty (30) days following Substantial Completion.

### § 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. Extension of Contract Time pursuant to this Article shall be the Contractor's sole and exclusive remedy for delay.~~

~~§ 8.3.4 Extension of Contract Time resulting from Changes in the Work shall be negotiated into respective Change Orders. Whenever the Contractor seeks an adjustment in the Contract Time as part of a Claim or Change Order, the Contractor shall justify the request with proper reference to the approved construction schedules. All executed Change Orders shall be deemed to include adjustments in the Contract Time, if any, resulting from the underlying Change in the Work.~~

~~§ 8.3.5 In addition to the liquidated damages set forth in the Agreement (AIA A191-2009), if any, the Contractor shall reimburse the Owner for all Architect's fees for additional services necessitated by Contractor's failure to achieve Substantial Completion within the time established in the Agreement and for more than one inspection for each Substantial Completion and Final Completion.~~

## 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. As such, approval of the schedule of values (and revisions thereto) shall be an absolute prerequisite to certification of the 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. All Applications for Payment shall be submitted in a computer format acceptable to the Owner.~~

~~§ 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.

**§ 9.3.4** All Applications for Payment shall be accompanied by lien waivers from the Contractor and applicable Subcontractors. The lien waivers when taken together, shall equal the sum due under the respective Application for Payment

**§ 9.3.5** All Applications for Payment shall be accompanied by the Contractor's and Subcontractors' certified payrolls as required by the Illinois Prevailing Wage Act.

**§ 9.3.6** Submission of properly executed lien waivers and the certified payrolls shall be absolute prerequisites to certification of the respective Application for Payment.

#### **§ 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, for failure of the Contractor to satisfy prerequisites expressly set forth in the Contract Documents and/or 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.

*§ 9.5.4 If, at any time, there should be evidence of any loss or damage for which it is not clear the Contractor may become liable and which would be chargeable to the Contractor, the Owner shall have the right to require, out of any payment due to the Contractor, to be made for an amount sufficient to completely indemnify (including reimbursement of attorneys' fees) the Owner against such loss or damage. Should there prove to be any such loss or damage, all payments are made, the Contractor shall make the payment of such amount which the Owner may be compelled to pay in defending such loss or damage, including any legal fees or other costs resulting from the litigation.*

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## § 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.



§ 9.8.1 The Contractor will withhold no portion of the Work or designated portion thereof until the Architect has received the Contractor's Application for Payment. Payment of the amount shall be made by the Owner to 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.

#### § 9.7 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. The Work will not be considered suitable for Substantial Completion until all required systems included in the Work are operational as designed and scheduled, and all required inspections, tests, and certifications have been made and passed, demonstrated operation of the systems necessary for the operation of the system has been completed and documented, and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature so that the Owner could occupy the Project on that day and the completion of the Work by the Contractor would not require the Owner to incur the cost of temporary business operations under use and enjoyment of the Project. As a further condition of Substantial Completion, the Contractor shall verify that all remaining Work will be completed within thirty calendar days following the Date of Substantial Completion. The Contractor shall secure and deliver to the Owner written warranties and guarantees from its subcontractors, sub-subcontractors and suppliers, bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and listing the period of warranty required by the Contract Documents. The Contractor is responsible for the warranty of all Work, whether performed by itself or its subcontractors or any tier. If at the time the Contractor does not complete remaining work within forty-five (45) days of Substantial Completion, the Owner shall give the Contractor written notice of the remaining Work to be completed. If the Contractor fails to complete the remaining work to be completed within seven (7) days of receipt of the written notice, the Owner reserves the right to complete the remaining Work in accordance with § 9.8.5 and to bill the Contractor for the cost thereof. All costs incurred by the Owner shall be offset against Contractor's final payment.

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§ 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 (the "Punchlist"). 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 as set out in the Agreement. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Upon Substantial Completion, via this Contract, the Contractor and applicable Subcontractors (via the subcontract flow-through provision(s) ) assign all vendor and manufacturers' warranties to the Owner. The manufacturers' warranties shall be submitted to the Architect prior to submission of the final Application for Payment.

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§ 9.8.7 Among other items identified elsewhere in the Contract Documents, submission of the following shall be a prerequisite to Substantial Completion:

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- a. All Record Documents
- b. All Operations and Maintenance Manuals (3 copies in 3-ring binders)
- c. All Manufacturers' warranties

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#### § 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 All Work depicted on the Contractor's Punchlist and thereafter identified in the Architect's inspection shall be completed within thirty days of issuance of the Certificate of Substantial Completion. 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, less retention. 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 specifically 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 solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. ~~Neither the Owner nor the Architect shall be responsible for any safety precautions or programs in connection with the Work.~~

### § 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. The applicable policies shall be endorsed to indicate that they are primary as respects the additional insureds, and not contributory with any other insurance available to the additional insureds.

§11.1.5 Contractor shall maintain, at its own expense, the following insurance coverages on an occurrence basis insuring the Contractor, its employees and agents, and the Indemnitees as required in Section 3.18 herein which insurance shall be placed with insurance companies rated at least "A" "XIV" by Best's Key Rating Guide and shall incorporate a provision requiring the giving of written notice to Owner at least thirty (30) days prior to the cancellation or non-renewal of any such policies.

§11.1.6.1 Contractor's Liability Insurance

The Contractor shall not commence Work under this Contract until all insurance required herein is obtained and approved by the Owner; nor shall the Contractor allow any Subcontractor to commence any portion of the Work.

§11.1.6.2 Commercial General Liability Insurance (including limited form contractual liability and completed operations, explosion, collapse and underground hazards), covering personal injury, bodily injury and property damages in the amount of One Million Dollars per occurrence and Two Million Dollars aggregate (\$1,000,000/\$2,000,000) covering personal injury, bodily injury and property damage.

§11.1.6.3 Automobile Liability Insurance, including hired and non-owned vehicles, if any, in the amount of One Million Dollars (\$1,000,000) covering personal injury, bodily injury and property damage.

§11.1.6.4 Workmen's Compensation Insurance in the amount of the statutory maximum with an Employer's Liability coverage of at least Five Hundred Thousand Dollars (\$500,000).

§11.1.6.5 Failure of either the Architect or Owner to demand Certificates of Insurance and/or policies shall not constitute a waiver of the contractor's responsibility hereunder. Nor shall review and/or approval by either the Owner or Architect in any way relieve Contractor of its responsibility for furnishing sufficient amounts and coverages of insurance. Said endorsements or amendatory riders shall indicate that as respects said additional insureds, there shall be severability of interests under said insurance policies. The Certificates and amendatory riders or endorsements shall clearly indicate the specific coverage (including contractual liability for the Contractor's obligation under 3.18) and shall contain provision requiring the giving of written notice to Owner at least thirty (30) days prior to the cancellation, non-renewal or material modification of any such policies, as evidenced by return receipt of United States Certified Mail.

§11.1.6.6 Under no circumstances shall the Contractor be relieved of providing insurance as required by this Contract. If inspection of Certificates by Owner would reasonably reveal any deficiencies in coverage as required by this Contract, Contractor shall not be relieved of its obligation to prove insurance coverages as required herein and may not assert any defense of waiver, acquiescence, estoppel, or otherwise by the failure of Owner, or its agents to object to the form of the Certificate, Policies or other documents provided by the Contractor to certify that the Contractor complied with the provisions of this Contract regarding insurance coverage.

§11.1.7 Contractor shall also protect the Owner by specifically incorporating this Article 11 into every subcontract entered into and also requiring that every Subcontractor incorporate this paragraph into every sub-subcontract it enters into. Notwithstanding this requirement, this Article 11 is deemed incorporated into every subcontract and sub-subcontract via such document's flow-through provisions.

§11.3.1.8 Liability of Contractor or Subcontractor is not limited by purchase of insurance. Nothing contained in the insurance requirements of the Contract Documents is to be construed as limiting the liability of the Contractor, the liability of any Subcontractor of any tier, or the liability of the Architect, or either of their respective insurance carriers. Owner does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Owner, Contractor, Architect, or any Subcontractor's interest or liabilities, but are merely minimums. The obligation of the Contractor and every Subcontractor of any tier to purchase insurance shall not, in any way, limit their obligations to the Owner in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of the loss which is not covered by either the Architect's, Contractor's or any Subcontractor's insurance.

**§ 11.2 OWNER'S LIABILITY INSURANCE**

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

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### § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Construction Manager ~~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, Owner'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 Contractor or Construction Manager, ~~as the case may be~~, 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. The Owner and Contractor shall not waive rights of subrogation.~~

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Construction Manager Owner as fiduciary and made payable to the Construction Manager 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 the Owner and/or 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 Construction Manager 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 Construction Manager's 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 Construction Manager 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.~~

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



§ 11.4.2 Contractor, within ten (10) days after receiving notice of the award, shall furnish a performance bond and a payment bond in the full amount of the Contract agreeing to perform the Work and fulfill all obligations in accordance with all of the provisions of the Contract Documents with a surety rated not less than A, VI by Best's Insurance Guide Key.

§ 11.4.3 If, at any time, the Owner shall become reasonably dissatisfied with any surety or sureties then upon the bonds, or for any other reason such bonds shall cease to be adequate security for the Owner, Contractor shall, within five (5) days after notice to do so, substitute an acceptable bond in such form and sum and signed by such other sureties as may be satisfactory to the Owner. No further payment shall be deemed due nor shall be made until the new sureties shall have qualified.

§ 11.4.4 The Performance Bond and Payment Bond shall be executed in conformity with American Institute of Architects, Doc. A312. Said bond forms shall be deemed modified to the extent to be consistent with this Article 11.4. A certified copy of the Power of Attorney from the surety company stating that the person executing the bond is duly authorized by the surety to execute the bond, shall accompany the bond.

§ 11.4.5 Whenever the Contractor shall be and is declared by the Owner to be in default under the Contract, the surety of the Contractor shall be responsible to compensate the Owner for the following costs incurred by the Owner as they result from the default: 1) any and all extra work, 2) additional Architect costs, 3) accounting costs, 4) legal costs and reasonable attorneys' fees, 5) testing, consulting, and other engineering costs, 6) any other costs incurred resulting from the default. Notwithstanding, the performance bond surety's payment obligation shall not exceed the penal sum of the bond.

§ 11.4.6 It shall be the duty of the Surety to give an unequivocal notice in writing to Owner within ten (10) days after receipt of a Declaration of Default and notice of termination of the Agreement of the Surety's election either to remedy the default or defaults promptly or to perform the remaining Work promptly or to pay to Owner costs as herein provided, time being of the essence. In said Notice of Election, the Surety shall indicate the date on which the remedy or performance will commence and it shall then be the duty of the Surety to give prompt notice in writing to Owner immediately upon completion of (a) the remedy and/or correction of each default, (b) the remedy and/or correction of each item of condemned Work, (c) the furnishing of each omitted item of Work, and (d) the performance of the Contract. The Surety shall not assert solvency of its principal or its principal's denial of default as justification for its failure to give notice of election or for its failure to promptly remedy the default or perform the Contract. If the surety reasonably requires additional time to investigate the declaration of default, it shall within the aforesaid ten (10) days so notify the Owner. In such case, the Owner may, without prejudice to its rights under the performance bond, continue construction of the Work, and charge the costs of such Work to the Surety. Upon completion of its investigation, which shall be completed as otherwise set forth in the bond or herein, or in any event not in excess of a reasonable time, the Surety may exercise its rights otherwise held herein and under the bond.

§ 11.4.8 In the event the said Surety shall fail to act promptly as hereinbefore provided, then Owner may cause ten (10) days notice of such failure to be given, both to said principal and Surety, and that at the expiration of said ten (10) days, the obligee shall have the authority to cause said Work to be done, and when the same is completed and the cost thereof quantified, the said principal and Surety shall hereby agree to pay any excess in the cost of said Work above the agreed price to be paid under said Contract, but not exceeding the penal sum of the bond.

§ 11.4.9 As the Work is completed by a completing contractor in accordance with the terms of the Contract Documents, to the extent that any portion of the Contract Price remains owing after setoff, Owner shall pay completing contractor in accordance with the Schedule of Values as certified by the Architect, and upon the completion of the Work pursuant to the Agreement, if any funds remain due on said Contract, the same shall be paid to said Surety.

§ 11.4.10 In case of any conflict between any provision of the performance bond and the Contract Documents, the provisions of the Contract Documents shall prevail.

§ 11.4.12 Any provisions contained within the bonds creating a prerequisite or condition precedent for Owner not otherwise required herein these General Conditions, or abrogating Owner's rights or remedies otherwise available in contract, law, or equity, are void.

§ 11.4.13 In the event the Surety shall make any assignment for the benefit of creditors or commit any act of bankruptcy, or if it shall be declared bankrupt, or if it shall file a voluntary petition in bankruptcy, or shall in the opinion of the Owner be insolvent, the Contractor agrees forthwith upon request of the Owner to furnish and maintain other corporate surety with respect to said bonds satisfactory to the Owner.

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## 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 ~~request~~ of 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~~ 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 ~~request~~ of Architect has not specifically requested to examine prior to its being covered, the ~~request~~ of 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 specific 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 on the specific defective work by corrective Work performed by the Contractor pursuant to this Section 12.2 for a period of one year from the time of completion of the corrective work.

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, 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.

§ 12.2.6. Any other responsibility assumed by the Contractor in connection shall be subject to the Architect prior to Substantial Completion.

### § 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 AND VENUE

The Contract shall be governed by the law of the State of Illinois. Exclusive venue for any dispute resolution proceeding shall be Cook County, Illinois, 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.

#### § 13.1.1. ILLINOIS RIGHTS ACT

In the event required by law, Contractor shall comply with the provisions of the Illinois Human Rights Act, 775 ILCS 10-0/1 et seq., to the extent required by law, Contractor agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, creed, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap, or disability, or on unfavorable discharge from military service, and further that it will continue all job classification to determine if minority persons or women are under-utilized and will take appropriate affirmative action to rectify such under-utilization.
2. That, if it hires employees in order to fulfill the Contract or any portion thereof, it will determine the possibilities of compliance with the Government's Rules and Regulations of minority employment in the area(s) from which it may reasonably recruit and will hire for each job classification for which employees are hired in such a way that minorities and women are under-utilized.
3. That, in all selections or advancement for employees covered by this contract, it will assure that all employees will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap, disability, or on unfavorable discharge from military service.
4. That it will send to each labor organization or representative of workers which it has or is bound by a collective bargaining or other agreement or understanding, a non-exclusive, non-exclusive organization or representative of the Government, and division under the Illinois Human Rights Act and the Government's Rules and Regulations. If any such labor organization does not exist, it will or refuse to bargain with the Contractor in its efforts to comply with such Government Rules and Regulations. The Contractor will promptly notify the Government and the Contractor's agency and will protect employees from any or various means necessary to fulfill its obligations hereunder.
5. That it will submit reports as required by the Government's Rules and Regulations, through all existing information is any form, time to time be requested by the Labor Union of the Government agency, and in all respects comply with the Illinois Human Rights Act and the Government's Rules and Regulations.
6. That it will inform each of its employees of the Government's Rules and Regulations, and of the Government's agency, and the Government for purposes of investigation is mutually cooperative with the Board, Human Rights Act and the Government's Rules and Regulations.

### 6.1.1.2 SOLIDWORKS

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 case, workplace and data in compliance with the requirements of the Privacy Workplaces Act. See the 2011  
 Draft.

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10.14.15 ILLINOIS DEPARTMENT OF LABOR REQUIREMENTS 108.14.15.1. Subcontractors must be a company to whom the Contract is awarded and must pay Subcontractors thereof to pay all benefits, vacation, and medical as stipulated by them not less than the prevailing wages for each craft or type of occupation or specialty needed to perform such work and the general prevailing rate for legal holidays and overtime work as determined by the Illinois Department of Labor and consistent to Illinois law and subject to such amendments and additions 108.15.2. The Contractor and Subcontractors shall comply with the *Illinois Prevailing Wage Act* (41 R.S.Mc. Ch. 13, Sections 108-1-12) and shall include in bids the costs for the current prevailing wages. Applications made to obtain prevailing wages, the Contractor and Subcontractors performing Work on the Project will be responsible for conforming to the changes and shall have the responsibility for determining where changes are made. No additional work is to be required by the Owner as a result of changes in the prevailing wages. All record keeping requirements are the obligation of the Contractor and Subcontractors. Certified payroll must be submitted to the Owner pursuant to Illinois law.

§ 131.5(3) "to the extent that there are any violations of this Act and any demands are made upon the Owner, Architect, or Construction Manager by the Illinois Department of Labor or by any contractor of the Contractor or subcontractor performing Work on the Project, the Contractor, or the materials Subcontractor and Contractor shall be responsible for indemnifying and holding the Owner, Construction Manager, and Architect harmless and harmless from all costs, liabilities or damages, incurred, directly or indirectly, by the Owner, Construction Manager, or Architect, including attorneys' fees, in responding to and complying with demands made by the Department of Labor, or an approved chapters and subdivisions, may be withheld from the payments to be made on the Project." It is the intention that the Owner, Architect, and Construction Manager shall suffer no financial or other additional consequences in compliance with any money order with regard to this Act.

8.1.1.4. By less than once per month, the Company shall submit certified payrolls to the Owner in compliance with the Illinois Prevailing Wage Act.

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

§13.1.6 Upon award, Contractor shall accept a certification in compliance with the applicable state law as required by the Drawings to the Contract.

§ 101.2. In the copyright and law of patent, and in the rights granted by law, the Copyright shall extend to "Any original work of authorship that is fixed in any tangible medium of expression, now known or later invented, in which the work can be perceived, reproduced, or otherwise communicated, in any form or by any means, electronic or mechanical, including photocopying, recording, and by any information storage and retrieval system, by or for the use of, the State or in political subdivision," as amended (330 U.S. 541, 1948).

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It is respectfully requested that this change be subject to all the provisions of the regulations and constitution of the International Union of Work on the Ocean, and that the role of law, and in particular any amendment contained in any of the existing Documents which may be included therein or incorporated therewith. Each national committee or local committee required by law to be inserted in the contract Documents shall be deemed to be inserted herein and the contract Documents shall be read and enforced as though it were included herein, and it is further insisted to otherwise, such provision is not, revised, or is not correctly inserted, than when insertion of other copy, the contract Documents shall be read and enforced as though it were included in such such insertion of copy.

13.13.2 CLAIMANT HAS RECEIVED CHRS 15 FROM ONE OF THE FOLLOWING MEMBERS OF THE COMMISSION: #  
 14.01.15, subsequent to the transfer and initial successful identification discussion, the CHRS 15 Claimant shall  
 submit an initial and subsequent document for the CHRS 15 that the CHRS may change in initial and subsequent

phases of the project. The Contractor who fails or refuses to protect such documents may work on the project in the future. Absolutely, the Owner reserves the right to direct the Contractor in any phase of the project, in any subject, and in any and all cases, investigations, and any other information of this contract. The Contractor is a person who, such employees have been convicted of any crime. Such criminal background checks will be performed at Contractor's expense and at no additional cost to Owner. The Contractor shall be responsible for obtaining any employee information and the last ground check. After the background has been completed, such employee shall not be allowed to work on the project until cleared. If an employee's information is revealed, then the employee shall receive a letter that must be worn at all times while working on the project. The Owner shall be the sole judge of what information may be deemed confidential. The Contractor shall be responsible for any and all checks of any employee in any phase.

### § 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 any obligation, rights, or interest in this Contract 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. No interest shall accrue on amounts held in retention.

#### § 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, hearingable evidence as required by Section 13.1.1.~~

~~§ 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 of the Work by the Owner as described in Section 14.1.1 constitute in the aggregate more than 10% percent of the total number of days scheduled for completion in 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

~~properly completed at that time, overhead, indirect, reasonable overhead and profit costs incurred by the Contractor, and damages.~~

§ 14.1.4 If the Work is stopped for a period of 30 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 fails to supply enough properly skilled workers or subcontractors
2. fails to make payment to his subcontractors and/or suppliers in accordance with the payment agreement between the Contractor and the Subcontractor;
3. repeatedly designs, supplies or fails to supply materials or equipment or to subcontract or sublet to subcontractors;
4. otherwise is guilty of substantial failure to comply with the Contract Documents.

§ 14.2.2 Upon termination by the Owner, if:

1. the Contractor fails, at any time, to which a cessation of Work is ordered in accordance with and although the Work or its parts remain capable of being worked on or properly prepared for the Work;
2. the Contractor shall, because of insolvency or concern to terminate remaining work or arrangement under the Federal Bankruptcy Act or any similar or applicable Federal or state law, or if a petition under any Federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or if the Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of his bankruptcy or insolvency;
3. the Contractor abandons the Work;
4. the Contractor suffers an abandonment, fire, flood, explosion, riot or fire, riot, or other accident or equipment of any nature, whether or which is substantially finished;
5. the Contractor's failure or concern of Work is filed as and any part of the Work or the part of the Project and not previously bonded or insured over the Contractor in a manner satisfactory to the Owner;
6. the Contractor, through any, direct, indirect, subrogated, or other assignment or under a governmental body or public or municipal authority, having jurisdiction of the Work or the site of the Project, or

§ 14.2.2 The Owner, without prejudice to any rights or remedies available to the Owner under the Contract Documents or at law or in equity, may, after giving the Contractor and the Surety, under the Performance Bond and under the Labor and Material Payment Bond described in Paragraph 1.1.3, seven (7) days' written notice, terminate the employment of the Contractor. If requested by the Owner, the Contractor shall remove, in and out of all of his equipment, machinery and supplies from the site of the Project within seven (7) days from the date of such request, and in the event of the delay from the date of such request, and in the event of the Contractor's failure to do so, the Owner shall have the right to remove and store such equipment, machinery and supplies at the Contractor's expense. In case of such termination, the Contractor shall not be entitled to receive any further payment for Work performed by the Contractor through the date of termination. The Owner's right to terminate the Contract and all remedies pursuant to this Subparagraph 14.2.2 shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant hereto at law or in equity.

§ 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.



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### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

**§ 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

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

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

- § 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work performed executed and approved by owner at such termination of any work required by the Contract not on the Work not executed.

## § 15.1 CLAIMS

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.

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

Maker. Claims by either party ~~the Contractor~~ must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~Contractor~~ 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. For Claims for Additional Time, to the extent that an equitable extension of Time is warranted, such extension shall be the Contractor's sole and exclusive remedy.

§ 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.

§ 15.1.5.3 For all Claims for Additional Time, the Contractor shall support such Claims in the same manner as supporting additional time for Change Orders.

### § 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 ~~by the Contractor~~, 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, arbitration or litigation, as the case may be, of any ~~Contractor~~ 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 At the sole and exclusive discretion of the Arbitrator, all claims, disputes and matters in controversy between any of the Architect, Owner, Contractor, Surety, Subcontractor or any material supplier arising out of or relating to

arbitration on which any or more of said award is based, or the Contract Documents or the breach thereof, except as provided in Article 15.4.1.1. The arbitrator shall have no authority to alter the substance of the award, but shall be deemed to have exercised such authority if the award is not in accordance with the Contract Documents. The arbitrator shall have no authority to alter the substance of the award, but shall be deemed to have exercised such authority if the award is not in accordance with the Contract Documents. The arbitrator shall have no authority to alter the substance of the award, but shall be deemed to have exercised such authority if the award is not in accordance with the Contract Documents.

§ 15.4.1.1. The demand for arbitration shall be filed in writing with the other party to the arbitration and with the American Arbitration Association, Inc. and the arbitrator, before the award is made. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would otherwise be barred by an applicable statute of limitations or repose. Where such limitations have been met, shall be deemed to be contested by a party.

§ 15.4.1.2. All parties shall carry on its work and perform their duties during any arbitrating proceedings and the owner shall continue to make payments as required by the Contract Documents. However, in the event of any party's non-payment, the arbitrator may suspend or suspend payment of the award.

§ 15.4.1.3. In addition to the other rules of the American Arbitration Association, the arbitrator shall follow the following rules:

4.1. The arbitrator, after instituting the arbitration, shall establish a procedure by which each party to the arbitration and to serve upon each other party a detailed statement of its position on the claim and law, along with appropriate responses thereto.

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4.2. All parties to the arbitration shall be entitled to reasonable discovery, including to be established by the arbitrator.

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4.3. The arbitrator shall be empowered and authorized to conduct an equitable and reasonable arbitration, including reasonable discovery as provided herein, including the award of discovery, and the award of proceedings, including the award of discovery, shall be conducted with the parties' intent that the arbitration be conducted in a reasonable and equitable manner.

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§ 15.4.2. In the event of an institution of arbitration between the parties in order, all attorney's fees and other costs incurred shall be awarded to the prevailing party.

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.

***Oak Park and River Forest High School***  
***District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education

FROM: Lauren Smith, Director of Human Resources

DATE: February 15, 2011

Cc: Stephen Isoye, Superintendent

RE: Student Hire Process - Summary of the hiring procedures for student workers

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**BACKGROUND**

A review of the hiring process for student workers has been completed. Below please find a summary of the standardized process for hiring student workers.

**SUMMARY OF FINDINGS**

**Student Workers Hiring Procedures**

*-Paid positions*

1. Each hiring supervisor must complete a personnel requisition form.
  - a. The form must include the rationale for hiring and the adverse impact should the position not be filled, an account number (activity fund), number of hours/days to be worked, the number of employees required, and a brief description of the duties.
2. Student worker positions may be posted in the department area, will be posted in the student bulletin, and will be available on-line.
3. Human Resources will provide an on-line internal application for each position.
  - a. Students must complete an on-line internal application.
    - i. Computers for completing the on-line application are available in the Library and in Human Resources.
4. On-line applications will be available for hiring supervisors to review.
5. The hiring supervisors will review applicants, interview, and make recommendations to Human Resources for hiring.
6. Human Resources will handle the hiring process of each student.
  - a. This includes, but not limited to, required paperwork and background checks.
7. The hiring supervisor must notify Human Resources when the student has completed his or her assignment.

**RECOMMENDATIONS**

The above information has been provided as information only. No action needed.

***Oak Park and River Forest High School  
District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education

FROM: Cheryl L. Witham

DATE: February 15, 2011

RE: Instructional Materials Recommendation

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**BACKGROUND**

A committee was convened out of a concern about inefficiencies in the current instructional material purchase model as well as the imminent loss of State Loan funds for textbooks. The objectives of the committee were to discuss and debate the topic, to collect relevant data, to initiate discussions within divisions, and to analyze alternative methods of distributing instructional materials for all students in an equitable and cost efficient manner.

**SUMMARY OF FINDINGS**

See attached.

**RECOMMENDATIONS (OR FUTURE DIRECTIONS)**

To accept the recommendation presented by the committee in the attached report, Bookstore Support and Distribution of Instructional Materials at the February regular Board of Education meeting.

# Report on Bookstore Support and Distribution of Instructional Materials

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## Committee Origin and Goal

Historically the State of Illinois has provided funding to school districts for the purchase of textbooks. This funding provided a significant subsidy to the cost of textbooks for families. Recently the State discontinued this subsidy. In addition, the bookstore software system is antiquated and needs to be replaced for a cost of approximately \$70,000. These two events will significantly increase the purchase price of instructional materials for families next year and we are very concerned about that reality in these economic times. The Board policy indicates that the bookstore should be self sufficient, and therefore, these increased costs will be passed along to families. The purpose of the Board policy is to ensure that instructional materials are not limited by cost containment and the instructional rigor can continue long term.

A committee was convened out of a concern about inefficiencies in the current instructional material purchase model as well as the imminent loss of State Loan funds for textbooks. The objectives of the committee were to discuss and debate the topic, to collect relevant data, to initiate discussions within divisions, and to analyze alternative methods of distributing instructional materials. The committee's goal was to maintain the District's ability to provide high quality instructional materials for all students in an equitable and cost efficient manner.

## Committee Composition

Committee members included two division heads, two faculty members, the Principal, two members from the Office of Curriculum and Instruction, one parent, the Chief Financial Officer, the Chief Information Officer and the bookstore manager. The committee met five times over the past 2 months; the topic has been discussed twice at DLT and twice at IC; and several conversations were held at division meetings. The committee weighed the advantages and disadvantages of two alternatives for instructional materials: to make the investment necessary to support the current purchase model; or to transition to a fee-based model for these materials. A survey of other high schools was conducted and there was a site visit to Glenbard High School District 87, where the decision has been made to transition from a purchase system to a fee-based system.

## Current Realities of OPRFHS's Instructional Material Purchase Model

With the current textbook purchase program families pay an average of \$350.00 annually for textbooks and materials. Recently, two significant changes have occurred to the way in which the District supports the current model. First, the current purchase model and the average cost to families have been substantially subsidized by funds made available by the State of Illinois Textbook Loan Program. In 2009, this revenue was eliminated and the District can no longer expect these funds to offset the cost of instructional materials. In addition, the software program used by staff for bookstore operations is outdated and no longer serves the needs of the District. The cost of replacing the hardware and software with a fully functional program would be approximately \$70,000. These two significant events will increase the cost of materials for families as early as the 2011-2012 school year. Other challenges with the current model include some waste caused by book usage for a single year, weak controls of escalating costs, and the automatic 10% sales tax passed along to families.



Over the past three years, the administration has considered moving to a fee structured program but continued to table the discussion due to other pressing matters. We feel that now is time for making a long term decision.

### Guiding Principles

The following principles were considered when the committee discussed a more sustainable bookstore and instructional material fee model:

- Continue to provide necessary materials to sustain a high quality and comprehensive curriculum;
- Develop a stronger cost consciousness;
- Maintain affordability for all families;
- Establish a rotation schedule for the purchase of new materials;
- Incorporate appropriate use of technology;
- Sustain a fair and equitable process that does not limit student access to rigorous courses due to the higher costs of instructional materials;
- Build in green initiatives;
- Assemble a defined budgeting process approved by the Board of Education.

### Data and Survey Results

Most high school districts in the NWPAA use a fee model. Glenbard High School District 87 and Lyons Township High School are the most recent examples of transition to a fee based model. The chart below summarizes the information gathered from NWPAA comparison districts.

School Name	What the fee covers	Amount of Fee	Additional fees
<b>Downers Grove</b>	Textbooks only	\$215	Kits and class lab fee
<b>District 211</b>	Textbook s only	\$160	Kits and consumables
<b>District 214</b>	Textbooks and Kits	\$375	
<b>Elmhurst</b>	Purchase model	Students purchase all materials	Class lab fees
<b>Evanston</b>	Textbooks only	\$85	\$15 technology fee \$15 general fee \$85 supplemental materials fee
<b>Glenbard High Schools</b>	Textbook only	\$125	Consumables, kits and lab fees
<b>Lake Park</b>	Textbook and consumables	\$295	
<b>Lyons Township</b>	Textbooks only	\$75	Consumables and kits
<b>Naperville</b>	Textbooks only	\$81	Consumables, kits and lab fees
<b>New Trier</b>	Outsourced to Follett	Students purchase all materials	
<b>Niles</b>	Textbook and consumables	\$450 first child, \$300 each addt'l child	Lab fee
<b>Stevenson</b>	Textbook and consumables	\$185	Lab fees

*\*KITS include supplies used in the classroom such as art materials. Consumables include workbooks and paperbacks.*

During the current school year, the average student at OPRFHS paid \$350 for materials purchased in the book store. Some paid as high as \$800, and others paid a smaller amount if they happened to have classes with a State Loan Book. Due to the elimination of the State textbook subsidy, if we continue the current purchase model, next year students would need to pay at least \$100 more on average for each textbook that was previously subsidized with State textbook funds. Due to the limitations of the current software system we cannot generate specific costs by student, program or graduation class.

## **Relevant Considerations**

### *Instructional Considerations*

- The committee discussed the use of materials in the classroom and the need to maintain access to high quality materials that support the work of teachers. The topic of annotation in textbooks was discussed on several occasions and alternative strategies were considered. Annotation in paperback books could continue under either model.
- The committee also discussed encouraging student access to courses that have traditionally had the highest materials costs in order to mitigate those costs as a limiting factor in enrollment.

### *Technology Considerations*

- The committee also discussed the use of technology for instructional materials and the rapid changes occurring in this arena. Providing these materials in an electronic format will allow us to stay current and to take advantage of multi-media enhancements which are not available in hardcopy materials.
- Standardization of materials will allow us to work closely with publishers and gain leverage on the purchase and adoption of electronic textbooks and other instructional materials.
- As we move further into utilizing technology in the classroom (either through 1:1 computing or student supplied technology) we will be providing electronic textbooks to load on these devices. With the district having control over the textbooks, this will be greatly simplified.
- Annotation is a skill which is highly valued. Delivering electronic materials will facilitate the annotation process.

### *Planning Considerations*

- A decision would need to be made in February 2011 in order to adequately prepare either model for the 2011-2012 school year.
- In either model, the staff will need to plan and adjust systems and procedures accordingly. Also, a communication plan is necessary to inform families of procedures and costs.
- If the District moves to a fee model, the District would need to purchase all books in the first year to be ready for the beginning of the school year. The District could run a campaign to buy back as many used books as possible.
- With the continuation of a purchase program, most families will see increased costs assuming the maintenance of the current materials selection, rotation, and distribution model.
- The fee model requires a new materials rotation schedule and materials distribution method. The Office of Curriculum and Instruction would have an increased role in budget monitoring and materials approval.

### *Cost Considerations*

- In a purchase model, the amount of outstanding monies still owed to the District is significant. These outstanding obligations pose a hardship for families and a challenge to the District's budget process.
- Introduction of a standard instructional materials fee based on average cost would mean that, compared to costs in the current school year, some students would pay a higher amount and others would pay less. The students who normally take elective course with expensive textbooks and materials would pay less than they do currently, while students who generally do not take these classes would pay more than they have paid with the State Loan funding system. A standard instructional materials fee model may create opportunities for students to take a class based on interest rather than affordability, especially given the projected increases in overall costs to families due to the elimination of the State textbook subsidy in coming years.
- The District would need to closely monitor the impact on the educational fund. If fees do not keep up with the costs for instructional materials a new cost center will be created in the Educational fund, which will negatively impact the annual amounts available for education. In that case, instructional materials would be a target during cost containment efforts to reduce deficit spending, thereby eroding the educational program over time.

### *Next Steps or Recommendations*

The committee reviewed three possible fee structures based on a five year rotation model; 1) a fee that would cover textbooks only; other supplies, consumables and kits would be purchased for an additional costs 2) a fee for text books and consumables but not kits and 3) an all-inclusive fee.

The committee recommends moving to an instructional materials fee for all students. The fee will cover the cost of books and materials over a five year cycle. This fee would be calculated annually using a formula based on averaging the cost of a five year purchase plan of materials, assuming those materials would be in continuous use for at least five years. This method would moderate any fee increases year by year and would avoid the need for a large increase in one particular school year. Students qualifying for free lunch would not pay a fee (these students do not currently pay for their books under the purchase system). Students who are registered, but do not actually attend school on the OPRF premises would also be exempt.

The five year rolling fee would cover all costs to run the bookstore including salaries, benefits, supplies and operational expenditures. It would also cover all books planned for purchase in the five year period. The all inclusive instructional materials fee would cover textbooks, paperback books, and other consumables and kits (i.e. supplies for Art Foundations). The fee would not include PE uniforms or calculators. Total costs would be divided by the number of students expected to pay the fee in the five year time frame. A spreadsheet of a five year rolling calculation is attached along with the three options. In the 2011-2012 school year the all inclusive instructional materials fee would be \$340.00 per student.

### *Instructional Considerations*

- The consistent fee for all students covering all instructional materials will encourage students to select classes based on interest rather than affordability. The model may eliminate the cost of materials as a barrier for financially disadvantaged students who want to participate in specific programs.

- The formula model will protect instructional materials from cost cutting measures and assure long term quality of program materials.
- The instructional materials fee model encourages the use of technology in the classroom and will permit just -in -time distribution of kits and consumables directly to the classroom. These two changes will enhance instructional time by insuring all students have the necessary materials in the classroom at the appropriate time.

#### *Technoloical Considerations*

- The model encourages creative approaches to addressing green initiatives and incorporating technology. The savings garnered from not printing can be captured and passed on to our students' families.
- Publishers have also indicated to us a willingness to customize textbooks for us. This will allow us to purchase only the materials we need and to distribute them electronically, saving the cost of printing

#### *Planning Considerations*

- The District would carefully review and select materials with the guiding principles in mind. An annual budget and fee proposal would be presented to the Board of Education for approval in January or February of each year.
- The model builds in a scheduled review of materials. Currently, we review materials on an as needed basis.

#### *Cost Considerations*

- An instructional materials fee model will be more cost effective overall than a purchase model.
- Presently, the District must collect a 10% sales tax on the sale of all textbooks, kits and consumables. The ten percent tax-- approximately \$80,000 of the current costs--would not be required with an instructional materials fee.
- There will be no need to replace the current software for a cost of \$70,000 because the District already owns a rental system software used in the Library.
- The model incorporates a cost containment approach by encouraging annual reviews, projections, averaging, and more accountability for the fee structure and budgeting.
- The rising costs of materials in the current purchase program will futher exacerbate the barrier to higher priced courses and widen the access gap to rigorous courses. We believe an equitable and more affordable instructional materials fee will encourage course selection based on interest.
- An instructional materials fee provide a managed and predictable cost for families and would not fluctuate randomly by student and year.

## Proposed Timeline

Date	Activity
<b>November 2010 – January 2011</b>	Internal committee researches options and makes a recommendation to the DLT.
<b>January 2011</b>	The DLT discusses the recommendation
<b>February 2011</b>	Board of Education consideration and vote
<b>Spring 2011</b>	Instructional materials needs assessment and distribution model refined.
<b>Spring 2011</b>	Communication plan
<b>June 2011</b>	Book buy-back period
<b>July 2011</b>	Book inventory
<b>Summer 2011</b>	Purchase instructional materials for next school year
<b>Summer 2011</b>	Set up and preparation of instructional materials distribution
<b>August 2011</b>	Distribution of instructional materials and collection of fees
<b>Fall 2011</b>	Debrief and assessment

# Estimated Per Student Instruction and Material Fee (IMF) Costs

	<u>Year #1</u>	<u>Year #2</u>	<u>Year #3</u>	<u>Year #4</u>	<u>Year #5</u>
<b>Start-up add. Costs**</b>	\$ 265,000.00				
<b>Textbook*</b>	\$ 482,664.00	\$ 186,866.00	\$ 77,517.00	\$ 213,323.00	\$ 135,660.00
<b>Workbooks*</b>	\$ 46,852.00	\$ 48,023.30	\$ 49,223.88	\$ 50,454.48	\$ 51,715.84
<b>Paperbacks*</b>	\$ 210,965.00	\$ 216,239.13	\$ 221,645.10	\$ 227,186.23	\$ 232,865.89
<b>Kits etc.*</b>	\$ 58,826.00	\$ 60,296.65	\$ 61,804.07	\$ 63,349.17	\$ 64,932.90
*Include 3% shipping & trending @ 2.5%					\$ 1,664,379.63
**Potential additional costs of obtaining bks from yr 2- 5 for 1st yr availability					5 yrs Wkbks/PB/Kits

**Salaries & Benefits** \$ 232,709.40 \$ 244,344.87 \$ 256,562.11 \$ 269,390.22 \$ 282,859.73  
Trending @ 5%

**Operational** \$ 44,024.61 \$ 44,684.98 \$ 45,355.25 \$ 46,035.58 \$ 46,726.12  
Trending @ 1.5%

	<b>Total 5 yr Costs</b>
<b>\$ 1,341,041.01</b>	<b>\$ 800,454.92 \$ 712,107.42 \$ 869,738.68 \$ 814,760.47 \$ 4,538,102.50</b>

**Total Students** 3,150  
**Less Waivers** 475  
2,675

**Total Students - 5 yrs**  
**\$4,538,103 / 13,375 =** \$ 339.30

Suggested Rental Fee = \$340.00 ~ INCLUDES EVERYTHING

**\$4,615,973 - \$309,208 = \$4,306,765 / 13,375 = \$322.00**

Suggested Rental Fee = \$325.00 ~ EXCLUDES ONLY KITS

**\$4,615,973 - \$1,664,380 = \$2,951,593 / 13,375 = \$220.68**

Suggested Rental Fee = \$225.00 ~ INCLUDES ONLY TEXTBOOKS

## Assumptions:

Purchasing all new textbooks - based on book orders from 2010-11 book/supply list

Includes paperbacks, workbooks & kits (extra supplies/books would be available for purchase in Bookstore)

Does not include PE uniforms or calculators

No \$ coming from State of Illinois for books

Summer School - include book fee in tuition

Special Ed...

## Sampling of Typical Student Costs at Multiple Levels

**Student ID 140065 (Freshman taking all basic/transitional classes w/no electives)**

<u>Course#</u>	<u>Course Description</u>		<u>2010-11</u>	<u>Elimination of SL Bks</u>
321	World History 1 & 2B	\$	78.50	\$ 78.50
203	Concepts in Algebra 1 & 2			
	In class set (does not incl. TI-84+ @105.00)		in class - no cost	?
112	Essentials of English 1 & 2			
	Porrie - 4 novels	\$	37.20	\$ 37.20
117	Elements of Reading 1 & 2 - bks provided		in class - no cost	?
505	Physical Science 1 & 2	\$	100.00	\$ 100.00
total		\$	215.70	\$ 215.70

**Student ID 140005 (Freshman taking all college prep w/no electives)**

<u>Course#</u>	<u>Course Description</u>		<u>2010-11</u>	<u>Elimination of SL Bks</u>
461	Spanish 1 & 2	\$	51.05	\$ 51.05
323	World History 1 & 2			
	World History Patterns of Interactions		state loan- no cost	\$ 84.75
211	Algebra 1 & 2			
	Algebra 1 (does not incl. TI-Nspire @135.00)		state loan-no cost	\$ 77.00
113	English 1 & 2			
	Elements of Literature		state loan-no cost	\$ 83.50
	Young - 4 novels	\$	43.50	\$ 43.50
513	Biology 1 & 2			
	Biology		state loan-no cost	\$ 100.00
total		\$	94.55	\$ 439.80

**Student ID 140038 (Freshman taking all honors w/no electives)**

<u>Course#</u>	<u>Course Description</u>		<u>2010-11</u>	<u>Elimination of SL Bks</u>
4151	French 3 & 4A	\$	114.40	\$ 114.40
2151	Advanced Algebra F1-2A			
	Alg & Trig (does not incl. TI-84+ @105.00)		state loan-no cost	\$ 81.00
1151	English 1 & 2A			
	Elements of Literature		state loan-no cost	\$ 83.50
	Gargiulo - 6 novels	\$	65.00	\$ 65.00
3251	World History 1 & 2A	\$	134.65	\$ 134.65
5151	Biology 1A	\$	100.45	\$ 100.45
total		\$	414.50	\$ 579.00

## Sampling of Typical Student Costs at Multiple Levels

**Student ID 130899 (Sophomore taking all Basic/Transitional)**

<u>Course#</u>	<u>Course Description</u>		<u>2010-11</u>	<u>Elimination of SL Bks</u>
122	English Literature 1 & 2(RC)			
	McNary - 4 novels	\$	33.10	\$ 33.10
509	Biological Science 1 & 2			
	Biology (Foundations Ed.)	state loan-no cost	\$	100.00
205	Concepts in Algebra 3 & 4			
	In class set- handouts? (does not incl. TI-84+ @105.00)	in class - no cost		?
461	Spanish 1 & 2	\$	51.05	\$ 51.05
9201	Drivers Education	\$	55.95	\$ 55.95
3561	Social Problems		handouts?	?
6512	Art Foundations	\$	55.66	\$ 55.66
		<b>total \$</b>	<b>195.76</b>	<b>\$ 295.76</b>

**Student ID 130573 (Sophomore taking all College Prep and electives)**

<u>Course#</u>	<u>Course Description</u>		<u>2010-11</u>	<u>Elimination of SL Bks</u>
6511	Art Foundations	\$	55.66	\$ 55.66
6612	Beginning Wheelthrowing	\$	14.90	\$ 14.90
223	Plane Geometry 1 & 2			
	Geometry (McDougal Little)	state loan-no cost	\$	100.00
485	Spanish 7& 8A	\$	136.75	\$ 136.75
575	Chemistry 1 & 2	\$	102.65	\$ 102.65
144	English Literature 1 & 2			
	Literature Apps to Fiction, Drama, Poetry	state loan-no cost	\$	63.50
	Porrie - 5 novels	\$	27.75	\$ 27.75
3591	Intro Psychology	\$	128.25	\$ 128.25
7052	Clothing Construction & Design	\$	9.10	\$ 9.10
		<b>total \$</b>	<b>475.06</b>	<b>\$ 638.56</b>

**Student ID 130461 (Sophomore taking all College Prep and electives)**

<u>Course#</u>	<u>Course Description</u>		<u>2010-11</u>	<u>Elimination of SL Bks</u>
223	Plane Geometry 1 & 2			
	Geometry (McDougal Little)	state loan-no cost	\$	100.00
323	World History 1 & 2			
	World History Patterns of Interactions	state loan- no cost	\$	84.75
477	Spanish 5 & 6	\$	40.80	\$ 40.80
144	English Literature 1 & 2A			
	Dorame - 5 novels	\$	27.75	\$ 27.75
513	Biology 1 & 2			
	Biology	state loan-no cost	\$	100.00
6331	Computer Applications	\$	-	\$ -
9202	Drivers Education	\$	55.95	\$ 55.95
		<b>total \$</b>	<b>124.50</b>	<b>\$ 409.25</b>



## Sampling of Typical Student Costs at Multiple Levels

Student ID 130590 (Sophomore taking all Honors w/ no electives)

Course#	Course Description		2010-11	Elimination of St. Bks
421	French 5 & 6A	\$	139.95	\$ 139.95
577	Chemistry 1 & 2A			
	<i>Modern Chemistry</i>	state loan-no cost	\$	100.00
225	Plane Geometry 1 & 2A	\$	43.25	\$ 43.25
136	English Literature 1 & 2A			
	Lee, B - 6 novels	\$	52.00	\$ 52.00
325	World History 1 & 2A	\$	134.65	\$ 134.65
9202	Drivers Ed	\$	55.95	\$ 55.95
		total \$	425.80	\$ 525.80

## Sampling of Typical Student Costs at Multiple Levels

Student ID 121674 (Junior taking College Prep and electives)

<u>Course#</u>	<u>Course Description</u>		<u>2010-11</u>	<u>Elimination of SL Bks</u>
467	Spanish 3 & 4	\$	33.95	\$ 33.95
5021	Health ED JS	\$	79.30	\$ 79.30
7032	Foods & Nutrition (SL Purchased Class Set)	state loan-no cost		?
333	Am History 1 & 2 <i>American Nation</i>	state loan-no cost	\$	89.00
573	ChemCom <i>Chemistry in the Community</i>	state loan-no cost	\$	100.00
223	Plane Geometry <i>Geometry (McDougal Little)</i>	state loan-no cost	\$	100.00
1331	Am Lit 1 Stovall - 6 novels	\$	55.00	\$ 55.00
		total \$	168.25	\$ 457.25

Student ID 121250 (Junior taking College Prep & Honors & Elective)

<u>Course#</u>	<u>Course Description</u>		<u>2010-11</u>	<u>Elimination of SL Bks</u>
448	Chinese 5A-6A	\$	80.95	\$ 80.95
133R	American Lit 1 & 2 REI Tsilimigras - 4 novels	\$	34.65	\$ 34.65
207	Concepts in Geometry 1 & 2 <i>Geometry Mathematics in Context</i>	state loan-no cost	\$	72.50
333	Am History 1 & 2 <i>American Nation</i>	state loan-no cost	\$	89.00
575	Chemistry 1 & 2	\$	104.90	\$ 104.90
6021	Consumer Education J/S	\$	60.00	\$ 60.00
925	PSAE Tutoring	\$	35.00	\$ 35.00
		total \$	315.50	\$ 477.00

Student ID 121603 (Junior taking College Prep & Honors & Elective)

<u>Course#</u>	<u>Course Description</u>		<u>2010-11</u>	<u>Elimination of SL Bks</u>
333	Am History 1 & 2 <i>American Nation</i>	state loan-no cost	\$	89.00
233	Advanced Algebra 1 & 2 <i>Algebra 2 - Apps/Eq/Graphs</i>	state loan-no cost	\$	81.00
423	French 7 & 8	\$	95.20	\$ 95.20
129	Am lit 1-2A/AP Walter - 8 novels	\$	64.45	\$ 64.45
575	Chemistry 1 & 2	\$	104.90	\$ 104.90
6322	Computer Applications	\$	-	-
		total \$	264.55	\$ 434.55

## Sampling of Typical Student Costs at Multiple Levels

Student ID 121746 (Junior taking Honors + electives)

Course#	Course Description		2010-11	Elimination of SL Bks
949	Newscene 1 & 2	\$	-	\$ -
949	AP Biology 1 & 2	\$	208.35	\$ 208.35
3681	Philosophy	\$	86.35	\$ 86.35
3692	AP Government	\$	93.30	\$ 93.30
425	French 7-8A	\$	104.25	\$ 104.25
242	Calculus Concepts 1-2A	\$	27.20	\$ 27.20
	<i>Calculus: Single Variable</i>		state loan-no cost	\$ 104.25
129	Am lit 1-2A/AP			
	Heidkamp - 9 novels	\$	84.20	\$ 84.20
		total \$	603.65	\$ 707.90

Student ID 121062 (Junior taking Miscellaneous)

Course#	Course Description		2010-11	Elimination of SL Bks
1701	Literature - Novels to Film			
	Myers - 4 Novels	\$	41.30	41.3
5752	Chemistry 2	\$	116.40	\$ 116.40
6341	Small Business Management		class sets/handouts	?
1772	Literature - One Author - Shakespeare	\$	45.00	\$ 45.00
333	Am History 1 & 2			
	<i>American Nation</i>		state loan-no cost	\$ 89.00
231	Functions and Trig 1 & 2			
	<i>Algebra 2 - Concepts &amp; Skills</i>		state loan-no cost	\$ 95.00
	<i>Trigonometry</i>		state loan-no cost	\$ 103.75
517	Anatomy & Physiology 1 & 2	\$	133.25	\$ 133.25
133	Am Lit 1 & 2	\$	48.10	\$ 48.10
	Noble - 6 novels			
		total \$	384.05	\$ 671.80

## Sampling of Typical Student Costs at Multiple Levels

### Student ID 116309 - Senior taking Miscellaneous

<u>Course#</u>	<u>Course Description</u>	<u>2010-11</u>	<u>Elimination of SL Bks</u>
231	Functions and Trig 1 & 2		
	Algebra 2 - Concepts & Skills	state loan-no cost \$	95.00
	Trigonometry	state loan-no cost \$	103.75
6401	Sports & Entertainment Mktg	\$ 46.00	\$ 46.00
3592	Intro to Psychology	\$ 128.25	\$ 128.25
1751	Literature - Sports & Literature (Handouts?)	\$ -	?
6512	Art Foundations	\$ 55.66	\$ 55.66
3751	History of Chicago	\$ 5.99	\$ 5.99
1532	Journal Writing	\$ 30.00	\$ 30.00
6042	Applied Keyboarding	\$ -	-
483	Spanish 7 & 8	\$ 15.85	\$ 15.85
total		\$ 281.75	\$ 480.50

### Student ID 116495 - Senior taking majority College Prep & Electives

<u>Course#</u>	<u>Course Description</u>	<u>2010-11</u>	<u>Elimination of SL Bks</u>
7151	Parenting		
	SL - Parenting: Rewards & Responsibilities	state loan-no cost \$	51.00
1472	Contemporary Literature	\$ 47.15	\$ 47.15
3751	History of Chicago	\$ 5.99	\$ 5.99
4692	Spanish 4A	\$ 33.95	\$ 33.95
233	Advanced Algebra 1 & 2		
	Algebra 2 - Apps/Eq/Graphs	state loan-no cost \$	81.00
556	Earth Science 1 & 2		
	Earth Comm 5 Unit Edition	state loan-no cost \$	90.00
1541	African American Literature	\$ 33.50	\$ 33.50
3772	Criminal & Civil Law (Handouts?)	\$ -	?
3332	Am History 2		
	American Nation	state loan-no cost \$	89.00
total		\$ 120.59	\$ 431.59

## Sampling of Typical Student Costs at Multiple Levels

**Student ID 116514- Senior taking Mix College Prep/AP's/Electives**

<u>Course#</u>	<u>Course Description</u>	<u>2010-11</u>	<u>Elimination of SL Bks</u>
245	College Algebra Trig 1 & 2 <i>Algebra &amp; Trig: Graphs &amp; Models</i>	state loan-no cost \$	132.50
637	AP Economics 1 & 2	\$ 133.35	\$ 133.35
487	AP Spanish 1 & 2	\$ 123.60	\$ 123.60
145	AP College English 1 & 2 All - 7 novels	\$ 62.80	\$ 62.80
3691	AP Government	\$ 93.30	\$ 93.30
3682	Philosophy	\$ 86.35	\$ 86.35
6041	Applied Keyboarding	\$ -	\$ -
5022	Health Ed JS	\$ 79.30	\$ 79.30
1642	Humanities	\$ 12.40	\$ 12.40
<b>total \$</b>		<b>591.10</b>	<b>\$ 723.60</b>

**Student ID 116309 - Senior taking All AP's +**

<u>Course#</u>	<u>Course Description</u>	<u>2010-11</u>	<u>Elimination of SL Bks</u>
589	AP Physics 1 & 2 <i>SL - University Physics</i>	state loan-no cost \$	144.50
145	AP College English 1 & 2 All - 7 novels	\$ 62.80	\$ 62.80
588	AP Chemistry 1 & 2	\$ 180.50	\$ 180.50
2631	AP Calculus BC 1 <i>SL - Calculus - Thomas/Finney</i>	state loan-no cost \$	139.25
2552	Advanced Topics in Computer Science 2A	\$ -	\$ -
3691	AP Government <i>Challenge of Democracy</i>	\$ 93.30	\$ 93.30
325	World History 1 & 2A <i>Traditions and Encounters</i>	\$ 134.65	\$ 134.65
<b>total \$</b>		<b>408.45</b>	<b>\$ 755.00</b>

## Sampling of Typical Student Costs at Multiple Levels

### Student ID 130590 (Sophomore SPED)

<u>Course#</u>	<u>Course Description</u>	<u>2010-11</u>	<u>Elimination of SL Bks</u>
60281	Consumer Ed	class sets	?
20781	Concepts in Geometry		
	Geometry Concepts and Skills	state loan-no cost \$	75.25
11871	Reading	class sets	?
1091	Broadcasting	class sets	?
12381	English Literature 1	class sets	?
55481	Environmental Science 1		
	Holt Environmental Science	\$ 94.85 \$	94.85
99981	Social Seminar	no books	no books
total \$		94.85 \$	170.10

### Student ID 140128 (Freshman SPED)

<u>Course#</u>	<u>Course Description</u>	<u>2010-11</u>	<u>Elimination of SL Bks</u>
11271	Essentials of English		
	Elements of Literature	state loan-no cost \$	83.50
	1 novel	\$ 7.45 \$	7.45
11671	Elements of Reading		
	books provided & read in classroom	in class - no cost	?
20371	Concepts in Algebra 1		
	books provided & read in classroom	in class - no cost	?
32171	World History 1B		
	AGS World History	\$ 54.00 \$	54.00
7881	Woodworking & Home Remodeling	in class - no cost	?
total \$		61.45 \$	144.95

### Student ID 121009 (Junior SPED)

<u>Course#</u>	<u>Course Description</u>	<u>2010-11</u>	<u>Elimination of SL Bks</u>
92071	Drivers Ed	\$ 55.95 \$	55.95
50171	Health Education	\$ 79.30 \$	79.30
60271	Consumer Ed J/S - book provided in class?	in class - no cost	?
20771	Concepts in Geometry 1 & 2		
	Geometry Mathematics in Context	state loan-no cost \$	72.50
6531	Digital Imaging	\$ 22.95 \$	22.95
13371	American Lit 1		
	Booth - txtbk, wkbk & 2 novels	\$ 105.85 \$	105.85
55472	Environmental Science 2	\$ 94.85 \$	94.85
7882	Woodwk & Hm Remodeling	in class - no cost	?
60572	Applied Keyboarding	\$ - \$	-
total \$		358.90 \$	431.40

## Sampling of Typical Student Costs at Multiple Levels

Student ID 116667 (Senior SPED)

<u>Course#</u>	<u>Course Description</u>		<u>2010-11</u>	<u>Elimination of SL Bks</u>
92071	Drivers Ed	\$	55.95	\$ 55.95
20981	Concepts in Algebra 3-4 <i>Algebra 1 (Holt)</i>	\$	79.30	\$ 79.30
14781	Contemp. Lit & Comp 1 & 2		in class - no cost	?
49971	World Languages & Cultures		in class - no cost	?
931	Acting Workshop		in class - no cost	?
6612	Beginning Wheelthrowing	\$	14.90	14.90
33382	American History 2		in class - no cost	?
		total \$	150.15	\$ 150.15

***Oak Park and River Forest High School  
District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education

FROM: Tim Keeley

DATE: February 15, 2011

RE: Office Supplies Contract Renewal

---

**BACKGROUND**

On July 1, 2008, the District signed a one-year contract with Quill Corporation, the lowest responsible bidder from the 2008 office supplies bid. The bid contract allows for up to three one-year extensions.

**SUMMARY OF FINDINGS**

Quill Corporation has agreed to extend the District's 2008-2009 contract pricing and to continue to offer free shipping on all orders. A competitive bid would most likely yield a price increase. More importantly, Quill is the only firm in the past two bid processes that offers free next-day shipping with no minimum order amount, allowing for a more responsible "just-in-time" supply inventory.

**RECOMMENDATIONS (OR FUTURE DIRECTIONS)**

It is my recommendation that the contract with Quill be extended for the final allowable one-year term, from July 1, 2011 through June 30, 2012.





100 Schelter Road  
Lincolnshire, IL 60069  
Phone: 1-800-634-4809  
Fax: 1-800-789-2016  
[www.Quill.com](http://www.Quill.com)

January 26, 2011

Tim Keeley  
Oak Park River Forest School District 200  
Purchasing Department  
201 N. Scoville Avenue  
Oak Park, IL 60302

Fax No.: 708-434-3910  
Page 1 of 3

Quill Bid Number: 10-9469  
Customer Bid Info Office Supply Bid Renewal  
Account Number: 2527265

Dear Tim Keeley,

Thank you for your recent bid request renewal. We appreciate your interest in Quill and are pleased to extend special pricing on the enclosed bid. Please note that the bid prices and free shipping are good through **February 28, 2012.**

In addition, for items not on your enclosed list, we're pleased to offer your organization an additional **10% column discount\*** to our already discounted prices in the catalog which are up to 80% off list. This extra savings is good through **February 28, 2012.**

Below are a few guidelines that we ask for you to follow to ensure the proper pricing and handling of your purchase orders:

- ☐ Please use the Quill bid number above, Quill item numbers and prices that are referenced on your bid when placing purchase orders for easy and accurate processing. Orders will ship and invoice the same day, if orders must invoice and/or ship on or after a certain date this must be indicated clearly on your purchase order
- ☐ Please fax or email your tax exempt form to [tax.exempt@quill.com](mailto:tax.exempt@quill.com) or fax # 800-499-8805
- ☐ Quill offers easy online ordering with visibility to your special item pricing as well as your extra discount. [www.Quill.com](http://www.Quill.com)

Thank you once again for choosing Quill. We look forward to working with you in the future.

Sincerely,  
Quill's Bid Department

- \* The 10% discount does not apply to office machines (printers, copiers, fax machines, vending machines, etc), technology products, computer hardware and software, or any item in Quill's Special Order Catalog. Furniture is also excluded from this offer, but we will, however, pay all of the shipping charges related to standard tailgate delivery when you purchase furniture from our full-line catalog. Installation or set up not included.
- \* Certain coupons, sales or promotions may not be used with this offer.

## Quill Bid Response Form

Quill Bid#: 10-9469

Customer Bid#: OFFICE SUPPLIES

Organization Name: OAK PARK RIVER FOREST S O 200

Enterprise#: 10725672

Contact Name: TIM KEELEY

Contact Phone#: 7084343266

Bid Type: Both

Bid Open Date: 1/22/2010

Bid Open Time: 12:00 AM

Item Expiration Date: 3/1/2012

Catalog Expiration Date: 3/1/2012

Total Items: 40 ( 40 Won, 0 Lost )

Total: \$ 115.80 ( 115.80 Won, 0.00 Lost )

Line#	Item#	Description	Color	Make	Qty	Price	UoM	UoM Conv	Case Qty	Ext Total	Note	Page
1	E1700	#17 CALENDAR BASE		MEAD	1	8.31	EA		50	8.31		
2	SK1616	2010-2011 WALL CALENDAR		ATA-GLANCE	1	3.27	EA		48	3.27	Disc:02/17/2010	203
3	79604Q	QB CONTEMP FULL STRIP STAPLER	BLACK		1	3.68	EA		36	3.68	Quill Brand	300
4	25774	RECYCLED STENO BOOK, 80/SHTS	WHITE		1	.59	EA		12	.69		
5	00196	PERMANENT GLUE STIC	WHITE		1	.94	EA		72	.94		
6	50140Z	CRAYOLA ANTI-DUST CHALK	WHITE	CRAYOLA	1	.44	BX		72	.44		
7	3M105	TAPE W/ DISPENSER, MAGIC		3M	1	.77	EA		144	.77		20
8	97800	MOISTENER BOTTLE, WEDGE TYPE		OFFICEMATE INTERNATIONAL	1	.33	EA		144	.33		
9	17112	QUILL'S ECONOMY PENCILS, #2			1	.56	DZ		120	.55	Quill Brand	209
10	79018E	QUILL MEDIUM POINT PEN	BLUE		1	.71	DZ	1 BX = 1 DZ	36	.71	Quill Brand	268
11	79018D	QUILL MEDIUM POINT PEN	RED		1	.71	DZ	1 BX = 1 DZ	36	.71	Quill Brand	268
12	79018K	QUILL MEDIUM POINT PEN	BLACK		1	.71	DZ	1 BX = 1 DZ	36	.71	Quill Brand	268
13	WFOFD12	WHITE-OUT, QUICK DRY	WHITE	BIC	1	.80	EA		144	.80		268
14	16074	WET ERASE MARKERS, FINE		SANFORD	1	1.99	ST	4 EA = 1 ST	72	1.99		251
15	16078	VIS-A-VIS WET-ERASE FINE-8PK	ASSTD	SANFORD	1	4.89	ST	8 EA = 1 ST	72	4.89		207
16	33001	SUPER SHARPIE MARKER	BLACK	SANFORD	1	9.80	DZ		12	9.80		207
17	331	PAPERMATE OFFICE PEN, MEDIUM	BLUE		1	1.00	DZ	1 BX = 1 DZ	72	1.00		283
18	332	PAPERMATE OFFICE PEN, MEDIUM	RED		1	1.00	DZ		72	1.00		
19	333	PAPERMATE OFFICE PEN, MEDIUM	BLACK		1	1.00	DZ		72	1.00		
20	81505	EXPO ERASER		SANFORD	1	1.19	EA		12	1.19		207
21	840018K	FINE POINT DRY ERASE MARKER-BK	BLACK	SANFORD	1	7.47	DZ	12 EA = 1 DZ	12	7.47		289
22	791123	QUILL STANDARD STAPLES 5000CT			1	.49	BX	5000 EA = 1 BX	80	.49	Quill Brand	300
23	24425	LIQUID ACCENT HIGHLIGHTER	FLYW	SANFORD	1	.70	EA	12 EA = 1 DZ	144	.70		
24	720200	QB STEEL BINDER CLIPS 3/4X3/8			1	.14	BX	12 EA = 1 BX	300	.14	Quill Brand	244
25	721000	QB STEEL BINDER CLIPS, 2X1"			1	.89	BX	12 EA = 1 BX	60	.89	Quill Brand	244

26	740137	QB FILE FOLDER, LTR, 1/3-CUT	MMILA		1	3.99	BX	100 EA = 1 BX	5	3.99	Quill Brand	384
27	21430	SCRATCH PADS, 3"X5", 100-SHEETS	WHITE	AMPAD	1	2.22	DZ	12 EA = 1 DZ	24	2.22		209
28	21431	SCRATCH PADS, 4"X6", 100-SHEETS	WHITE	AMPAD	1	3.25	DZ	12 EA = 1 DZ	12	3.25		209
29	7382YW	QB SELF-STICK NOTES, 1-1/2X2"	YELLOW		1	1.14	DZ	12 EA = 1 DZ	36	1.14	Quill Brand	236
30	7384YW	QB SELF-STICK NOTES, 3X3"	YELLOW		1	2.19	DZ	12 EA = 1 DZ	18	2.19	Quill Brand	236
31	0E91228	QB ENVELOPE, OPEN-END, 9"X12"	KRAFT		1	10.60	BX	250 EA = 1 BX	1	10.60	Quill Brand	490
32	787139	QUILL DRY ERASE MARKER CHS TIP	BLACK		1	5.78	DZ		12	5.78	Quill Brand	207
33	787137	QUILL DRY ERASE MARKER CHS TIP	RED		1	5.78	DZ		12	5.78	Quill Brand	207
34	787140	QUILL DRY ERASE MARKER CHS TIP	BLUE		1	5.78	DZ		12	5.78	Quill Brand	207
35	787138	QUILL DRY ERASE MARKER CHS TIP	GREEN		1	5.78	DZ		12	5.78	Quill Brand	207
36	20152Q	RECYCLED WRITING PADS, 5"X8"	WHITE		1	5.59	DZ	12 EA = 1 DZ	12	5.59		208
37	P1KS	QB PAPER CLIPS, REGULAR SMOOTH			1	1.59	PK	1 PK = 10 BX	12	1.59	Quill Brand	244
38	P1JG	QB PAPER CLIPS, JUMBO SMOOTH			1	3.69	PK	1 PK = 10 BX	10	3.69	Quill Brand	244
39	710786	QB LASER LBL'S 1X2 5/8, 3M/BOX	WHITE		1	5.41	BX	1 EA = 1 BX	10	5.41	Quill Brand	431
40	765002	QB TAPE, INVISIBLE, 3/4X1296"			1	.54	RL		144	.54	Quill Brand	242

# ***Oak Park and River Forest High School District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education

FROM: Tim Keeley, Transportation Coordinator

DATE: February 15, 2011

RE: Executive Summary for Special Education Transportation RFP 2011-2014

---

## **BACKGROUND**

On February 1, 2011, a Request for Proposals was published for Special Education Transportation. The current contract with Grand Prairie Transit expires at the conclusion of this school year and all contract extensions have been exhausted.

## **SUMMARY OF FINDINGS**

Proposals were received from five firms, All-Ways, First Student, Grand Prairie, Illinois Central and Lakeview Bus Lines. A summary of the costing results can be found below.

<b>Vendor</b>	<b>2011-2012 Total Cost</b>	<b>2012-2013 Total Cost</b>	<b>2013-2014 Total Cost</b>	<b>3-Year Cost</b>
Illinois Central	\$ 707,653.54	\$ 728,894.38	\$ 750,745.54	\$ 2,187,293.46
Lakeview	\$ 836,438.00	\$ 836,438.00	\$ 857,444.00	\$ 2,530,320.00
Grand Prairie	\$ 847,412.56	\$ 868,597.59	\$ 894,657.95	\$ 2,610,668.10
First Student	\$ 896,833.82	\$ 919,257.63	\$ 942,234.06	\$ 2,758,325.51
All-Town	\$ 903,811.41	\$ 928,651.52	\$ 954,191.44	\$ 2,786,654.37

A check of references (Chicago Public Schools, Oswego District 308 and Forest Ridge District 142) netted positive feedback. The referenced school districts indicated that Illinois Central was a reliable provider, offering excellent safety, on-time service and timely accommodation of any scheduling deviations.

## **RECOMMENDATIONS (OR FUTURE DIRECTIONS)**

Affirm the low-bid of Illinois Central at the February 15 Finance Committee Meeting. A contract, incorporating District 200 policy as well as the Illinois Central Bid parameters will be sought for future Board approval.

***Oak Park and River Forest High School  
District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education

FROM: Tim Keeley Transportation Coordinator

DATE: February 15, 2011

RE: Executive Summary for Field Trip/Extracurricular Transportation Services Bid

---

**BACKGROUND**

On February 1, 2011, bids were solicited for Field Trip/Extracurricular Transportation Services. The current contract with R&D Bus Company is set to expire at the conclusion of this school year.

**SUMMARY OF FINDINGS**

Proposals were received from six firms, All-Ways, First Student, Grand Prairie, Illinois Central and Lakeview Bus Lines. Vendors were asked to provide a full tariff schedule as well as pricing for six commonly-travelled OPRFHS trips as determined by their proposed tariff schedule.

A summary of the costing results can be found below.

Of the six vendors, Illinois Central is the only one to offer a flat rate (\$36.00) per hour on all trips. The tariff schedules offered by the remaining five vendors included numerous charges and fees based on mileage, trip duration, conflict with curriculum routes and weekend fees, to name a few. Taking these two factors into account, it is clear that Illinois Central is the low bidder.

	<u>R&amp;D</u>	<u>All-Ways</u>	<u>Grand Prairie</u>	<u>Illinois Central</u>	<u>First Student</u>	<u>Lakeview</u>
Lindberg Park	135.00	139.00	309.00	144.00	275.63	175.00
Downers North	320.00	225.00	363.00	180.00	287.81	185.00
Volo Bog	650.00	435.00	531.00	252.00	447.86	265.00
Lyons Twp.	215.00	225.00	363.00	180.00	287.81	185.00
Museum of S&I	265.00	315.00	531.00	180.00	447.86	265.00
Starved Rock	750.00	685.00	411.00	252.00	412.86	265.00
Total	2,335.00	2,024.00	2,508.00	1,188.00	2,159.83	1,340.00

***Oak Park and River Forest High School***  
***District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

A check of references (Chicago Public Schools, Oswego District 308 and Forest Ridge District 142) netted positive feedback. The reference school districts indicated that Illinois Central was a reliable provider, offering excellent safety, on-time service and timely accommodation of any scheduling deviations.

**RECOMMENDATIONS (OR FUTURE DIRECTIONS)**

Affirm the low-bid of Illinois Central at the February 15 Finance Committee Meeting. A contract, incorporating District 200 policy as well as the Illinois Central Bid parameters will be sought for future Board approval.

***Oak Park and River Forest High School  
District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education

FROM: Cheryl L. Witham

DATE: February 15, 2011

RE: Student Fees for Fiscal Year 2011 - 2012

---

**BACKGROUND**

Each year the administration reviews the student fees.

**SUMMARY OF FINDINGS**

Last year the athletic Pay to Play fee was increase by \$5.00, and all other fees remained the same.

<b><i>Description</i></b>	<b><i>Amount 2010</i></b>	<b><i>Amount 2011</i></b>	<b><i>Amount 2012</i></b>
<i>Freshman</i>	\$85.00	\$85.00	\$85.00
<i>Sophomore</i>	\$245.00	\$245.00	\$245.00
<i>Juniors</i>	\$60.00	\$60.00	\$60.00
<i>Seniors</i>	\$95.00	\$95.00	\$95.00
<i>Pay to Play</i>	\$50.00	\$55.00	\$55.00

**RECOMMENDATIONS (OR FUTURE DIRECTIONS)**

To approve no increase in the student registration fees for the 2011 – 2012 School Year.

***Oak Park and River Forest High School***  
***District 200***  
*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education

FROM: Cheryl L. Witham, Chief Financial Officer and Treasurer

DATE: February 15, 2011

RE: Finance Advisory Committee Update

---

**BACKGROUND**

The Board of Education has requested a monthly report of activities of the FAC in order to enhance communication and transparency.

**SUMMARY OF FINDINGS**

During the month of January 2011 the following activities occurred:

- The Finance Advisory Committee (FAC) met once. The topic of discussion was the educational and communication plans.
- The communication sub-committee met once to discuss the educational and communication recommendations from FAC.
- The Instructional Quality Review Committee met to review the EACII program as a pilot test of the system and to create the template for future reports to QRC.
- The Board of Education approved the ALT structure as recommended by FAC.

**RECOMMENDATIONS**

None at this time.



***Oak Park and River Forest High School  
District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education

FROM: Cheryl Witham

DATE: February 15, 2011

RE: Student Achievement Initiatives for FY 2012 Budget

---

**BACKGROUND**

This is an opportunity for the Board of Education to discuss and prioritize Student Achievement Initiatives for the FY 2012 budget. We have included an updated table of student achievement initiatives currently in place.

**SUMMARY OF FINDINGS**

**RECOMMENDATIONS (OR FUTURE DIRECTIONS)**

Board Discussion of 2012 budget for student initiatives.

# STUDENT ACHIEVEMENT PROGRAM / INITIATIVE SUMMARY

Program/Initiative	Date Initiated	Target Students	Staff Responsible	Students Involved (annual)	Cost (annual)	Assessments	Type of Program
<b>Tutoring Program</b> Drop-in tutoring center open from 7:15 a.m. to 3:45 p.m.	8/97	Students needing extra help in English, math, or science.	P. Prale L. Everding	Approx. 600	1 FTE (CPA)	Grades earned in academic courses	Academic Support
<b>Project SCHOLAR</b> Supervised/structured study hall to assist freshmen with moving into the honors level (Math/English/Science)	08/01 (Science added in 2003)	Freshmen with honors level potential	P. Prale N. Wise D. Alexander L. Smith P. Wright	Approx. 60	0.6 FTE	Honors course taking patterns, success fraction, ACT scores, WGPA	Academic Support
<b>Summer Math Step-Up Program</b> Opportunity for students to take a summer math course to allow moving up a level.	06/85	Freshmen/sophomores who have demonstrated the potential to move up a level.	J. Frey D. Craft	211	\$7,900		Academic Support
<b>Test Prep Course Enrollment</b> An effort by counselors to personally encourage African American juniors to enroll in an ACT or SAT test prep course.	12/00	African American juniors planning to attend college and needing to take college entrance exams.	A. Hill	14	\$1,815	Standardized test scores	Academic Support
<b>Prairie State Tutoring</b> Test prep in PSAE subject areas: reading, math, and science.	02/04	Students at-risk of not meeting standards on the PSAE	A. Hill	40	0.2 FTE	PSAE Scores	Academic Support
<b>Scholar Support</b> Support period for sophomore students who participated in Project Scholar.	08/03	Identified sophomores who would benefit from an additional year of support.	P. Prale P. Wright	20	0.2 FTE	Honors course taking patterns, success fraction, ACT scores, WGPA	Academic Support
<b>College Prep Scholar</b> Academic enrichment and instructional support program to assist students with developing skills for College Prep level English.	08/04	Freshmen requiring one period of academic support in order to be successful at the College Prep level.	P. Prale S. Rosas	20	0.2 FTE	Attendance and discipline patterns, success fractions in core academic courses, ACT scores, WGPA	Academic Support

Program/Initiative	Date Initiated	Target Students	Staff Responsible	Students Involved (annual)	Cost (annual)	Assessments	Type of Program
<b>MSAN Annual Student Conference</b> A conference for African American students sponsored by the Minority Student Achievement Network.	03/01	A few students attend, and then assume leadership roles among minority students and to initiate student efforts to eliminate the achievement gap.	D. Alexander J. Stovall	5	\$10,000		Co-Curricular
<b>Pull out tutoring/Literacy Coaching</b> English/reading support intended to bolster reading and communication skills.	08/06	Title I identified freshmen and sophomores	M. Blackwell C. McNary	75	0.4 FTE from Title I funds		Curriculum Initiative
<b>Black Professional Day</b> A half-day conference for African-American students providing an opportunity to hear from and converse with African American representatives of various professions.	02/01	Identified students who would benefit from exposure to successful African American professionals.	D. Lescene M. Byars	150	\$3,500		Co-Curricular
<b>Theta Scholars/MAC Scholars</b> A mentoring program that allows successful African American students to mentor and assist other African American students	08/06	African American students	D. Alexander	30	\$8,000	Attendance and discipline patterns, success fractions in core academic courses, WGPA	Co-Curricular
<b>8 to 9 Connections</b> Summer transition program for incoming freshmen with emphasis on academic and social skills. Co-taught classes by D97/D200 English and Math teachers.	06/05	Incoming freshmen identified by joint D200, D97, and D90 criteria.	P. Prale K. Johnson	42	\$22,000 paid with Title I funds	Attendance and discipline patterns, success fractions in core academic courses, WGPA	Curriculum Initiative
<b>Summer Bridge</b> Program for parents and incoming freshmen in the 8 to 9 Connections program and other identified students. Coordinated by OP Township Youth Services and an OPRF counselor.	06/04	Students and parents identified by D97 and D90 support services program.	P. Prale K. Johnson	60	\$2,000	Attendance and discipline patterns, success fractions in core academic courses, WGPA	Parent Support

Program/Initiative	Date Initiated	Target Students	Staff Responsible	Students Involved (annual)	Cost (annual)	Assessments	Type of Program
<b>Pupil Support Services Team Model (PSS)</b> Team assessment process for analysis of student problem situations; recommendation for intervention.	08/04	Students whose patterns of changing behavior, attendance or performance cause concern.	N. Rouse J. Bishop J. Wiencek		NA		Student Services
<b>CRISS (Creating Independence through Student Owned Strategies)</b> Staff development to enhance literacy instruction among teachers across disciplines.	06/04	Students of teachers who have been trained in CRISS strategies.	P. Prale C. McNary		\$3,000/yr paid from Title I funds		Professional Development
<b>Algebra Block</b> Extended minutes in 9 <sup>th</sup> -grade math that uses Nspire calculators that uses a curriculum providing interactive explorations with technology-based activities.	08/06	Freshman math students identified by standardized test scores.	J. Frey	150	0.6 FTE	Grades in Algebra 1-2, standardized test scores, WGPA	Curriculum Initiative
<b>Spoken Word Black Literature Curriculum Developer Position A</b> full time position assigned to support poetry instruction and develop black literature units in English classes	08/04	All students	P. Prale D. Cohen P. Kahn	2,000	1.0 FTE	Attendance and discipline patterns, success fractions in core academic courses, WGPA	Curriculum Initiative, Professional Development
<b>Outreach Coordinator Position A</b> full time position assigned to support parent involvement and support of student academic achievement	08/04	All students	D. Mittleman N. Rouse	2,000	1.0 FTE	Attendance and discipline patterns, success fractions in core academic courses, WGPA	Student Services
<b>Summer Practicum in English A</b> summer school course for sophomores and juniors with a focus on reading, understanding composition, and executing of writing.	06/06	Identified sophomores and juniors	P. Prale D. Cohen	20	\$4,900	Grades in English classes, standardized test scores, WGPA	Curriculum Initiative

<b>Literacy Support</b> Daily support period with a teacher to assist with transition to high school.	08/06	Freshmen enrolled in English 1-2 and achieving below the 50 <sup>th</sup> percentile nationally in reading	P. Prale	50	0.8 FTE 1.0 FTE (CPA)	Attendance and discipline patterns, success fractions in core academic courses, ACT scores, WGPA	Curriculum Initiative
<b>F.R.E.E. (Females Reaching for Educational Excellence)</b> Promotes good decision-making and problem-solving skills in collaboration with community support and school resource officers.	05/02	Female students referred by school staff	J. Bishop	10	\$3,500		Student Services
<b>MURÉE (Males United to Reach Educational Excellence)</b> Promotes good decision-making and problem-solving skills in collaboration with community support and school resource officers.	08/03	Male students referred by school staff	J. Bishop L. Wade	6	\$3,500		Student Services
<b>Behavior Interventionist</b> A full time faculty member assigned to reduce behavior incidents and off campus placements within the ED program.	08/07	ED students	T. Halliman T. Brennock T. Tarrant	120	1.0 FTE	Attendance and discipline patterns, success fractions in core academic courses, WGPA	Special Education
<b>Reading Lab</b> A program to address gaps in reading fluency and comprehension with state-of-the-art technology to assess, diagnose and prescribe a reading program for individual students. This is an NCLB/RTI best practices approach.	08/07	Identified Special Ed students.	T. Halliman C. Biggins A. Neuman	60	\$40,000	Grade level reading scores, WGPA	Special Education

***Oak Park and River Forest High School  
District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education  
FROM: Cheryl L. Witham  
DATE: February 15, 2011  
RE: Approval of PTAB Resolution

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**BACKGROUND**

The administration is asking the Board of Education to consider this resolution giving the administration, in conjunction with our law firm Franczek, Radelet P.C. authority to file a Request to Intervene in Appeal Proceedings for the re-assessment of property within our District.

**SUMMARY OF FINDINGS**

These PTAB requests have a negative effect on our property tax collection in subsequent years and the revenue cannot be recaptured. This request is necessary because the District must intervene within 30 days of notice. This is often too short a time period to bring the issue before the Board of Education.

This resolution must be approved by the Board of Education on an annual basis.

**RECOMMENDATIONS (OR FUTURE DIRECTIONS)**

This resolution will be presented to the Board of Education for approval at the Regular Board of Education meeting on February 24, 2011.

**Resolution Authorizing Intervention  
in Proceedings before the  
State of Illinois Property Tax Appeal Board**

**Whereas**, an owner or manager of a parcel or parcels of real property located within the boundaries of the State of Illinois has the right to file an appeal challenging the assessed value of the parcel or parcels of real property with the State of Illinois Property Tax Appeal Board ("PTAB"); and

**Whereas**, a reduction in the assessed value of a parcel or parcels granted by the PTAB will lead to the issuance of a real estate tax refund from the Board of Education of Oak Park & River Forest High School District No. 200 ("Board"); and

**Whereas**, a taxing district has the right to intervene in proceedings before the PTAB in order to protect the taxing district's revenue interest in the assessed value of a parcel or parcels; and

**Whereas**, the time period during which a taxing district may intervene is 60 days after the taxing district's receipt, from the Cook County Board of Review, of notice of the filing of an appeal by an owner or manager of a parcel or parcels of real property; and

**Whereas**, the Board has determined that it is necessary, desirable, advantageous, and in the public interest to defend the Board's real property tax base by intervening in PTAB appeals filed on parcels within the boundaries of the Board.

**NOW THEREFORE, BE IT HEREBY RESOLVED**, by the Board of Education of Oak Park & River Forest High School District No. 200, Cook County, Illinois, as follows:

1. The Board finds that all of the recitals contained above are true and correct, and that the same are hereby incorporated herein by reference.
2. The Board hereby authorizes Franczek Radelet P.C., as its legal representative, to: a) file a Request to Intervene in Appeal Proceedings in all 2011 assessment-year appeals filed at the PTAB for which the Board receives notice from the Cook County Board of Review, and b) represent the Board's interests in those proceedings.
3. All motions and resolutions or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.
4. If any section, paragraph, clause, or provision of this Resolution shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the other sections, paragraphs, clauses, or provisions of this Resolution.
5. This Resolution shall be in force and effect upon its adoption.

After a full and complete discussion thereof, Member \_\_\_\_\_ moved that the foregoing Resolution be adopted and Member \_\_\_\_\_ seconded the motion. The President directed the Secretary to call the roll for a vote upon the motion to adopt this Resolution. Upon a roll call vote taken, the Board of Education voted as follows:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

Abstaining: \_\_\_\_\_

PRESENT: \_\_\_\_\_

Absent from Meeting: \_\_\_\_\_

The President declared the motion carried and the Resolution duly adopted.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
President, Board of Education

ATTEST

\_\_\_\_\_  
Secretary, Board of Education



***Oak Park and River Forest High School  
District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education  
FROM: Cheryl Witham  
DATE: February 15, 2011  
RE: Financial Reports

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**BACKGROUND**

It is a requirement that the Board of Education accepts and approves the monthly Financial Reports.

**SUMMARY OF FINDINGS**

Attached are the Financial Reports for January, 2011.

**RECOMMENDATIONS (OR FUTURE DIRECTIONS)**

The January, 2011 Financial Reports, will be presented to the Board of Education for approval at the February 24<sup>th</sup>, Board of Education meeting.

**OAK PARK AND RIVER FOREST HIGH SCHOOL DISTRICT 200**  
**Monthly Financial Statements**  
**January 2011**

**Education Fund**

	<u>Audited</u> <u>2009-2010</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2010</u>	<u>%</u>	<u>Original</u> <u>Budget</u> <u>2010-2011</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2011</u>	<u>%</u>
<i>Receipts</i>						
Property Taxes	47,315,686	23,780,982	50.3%	43,378,031	20,011,147	46.1%
Other Local Sources	3,617,642	1,881,710	52.0%	2,036,844	2,170,936	106.6%
State Sources	2,834,759	1,734,729	61.2%	1,535,232	1,917,409	124.9% <sup>1</sup>
Federal Sources	2,607,278	1,490,079	57.2%	1,199,587	509,543	42.5%
	<u>56,375,365</u>	<u>28,887,500</u>	<u>51.2%</u>	<u>48,149,694</u>	<u>24,609,035</u>	<u>51.1%</u>
<i>Expenditures</i>						
General Instruction	19,919,270	8,740,326	43.9%	21,480,792	9,466,101	44.1%
Special Education	5,555,934	2,452,751	44.1%	5,109,106	2,251,245	44.1%
Adult Education	20,282	6,000	29.6%	20,539	-	0.0%
Vocational Programs	335,859	191,959	57.2%	378,059	219,032	57.9%
Interscholastic Programs	1,963,819	961,910	49.0%	2,189,182	1,031,114	47.1%
Summer School	287,451	164,877	57.4%	313,566	155,526	49.6%
Drivers Education	757,147	327,289	43.2%	765,563	327,587	42.8%
Other Instructional	2,801,472	1,264,845	45.1%	3,006,379	1,044,657	34.7% <sup>2</sup>
Support Svcs. - Pupil	6,607,062	3,083,843	46.7%	6,754,759	3,045,359	45.1%
Support Svcs. - Admin.	4,625,192	2,439,252	52.7%	4,663,602	2,374,615	50.9%
	<u>42,873,488</u>	<u>19,633,052</u>	<u>45.8%</u>	<u>44,681,547</u>	<u>19,915,236</u>	<u>44.6%</u>
<i>Other Sources/(Uses)</i>						
Transfers fr. Other Funds	1,139,202	-	0.0%	-	-	N/A
Transfers to Other Funds	(1,000,000)	-	0.0%	-	-	N/A
	<u>139,202</u>	<u>-</u>	<u>0.0%</u>	<u>-</u>	<u>-</u>	
Change in Fund Balance	13,641,079	9,254,448		3,468,147	4,693,799	
Beginning Balance	<u>52,572,102</u>	<u>52,572,102</u>		<u>66,213,181</u>	<u>66,213,181</u>	
Ending Balance	<u>66,213,181</u>	<u>61,826,550</u>		<u>69,681,328</u>	<u>70,906,980</u>	

1. State aid budget was significantly reduced for fiscal 2011 due to uncertainty of the state actually paying Districts.  
The majority of the actual collections relates to the prior year grants and claims that the state was late in paying to Districts.

2. District started the EAC program this school year and has reduced our out placed special education students and thus lowered the amount it pays for tuition.

**OAK PARK AND RIVER FOREST HIGH SCHOOL DISTRICT 200**  
**Monthly Financial Statements**  
**January 2011**

**Bookstore Fund**

	<u>Audited</u> <u>2009-2010</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2010</u>	<u>%</u>	<u>Original</u> <u>Budget</u> <u>2010-2011</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2011</u>	<u>%</u>
<i>Receipts</i>						
Other Local Sources	812,920	622,495	76.6%	850,003	704,423	82.9%
	812,920	622,495	76.6%	850,003	704,423	82.9%
<i>Expenditures</i>						
Support Svcs. - Other	809,034	695,457	86.0%	850,003	754,305	88.7%
	809,034	695,457	86.0%	850,003	754,305	88.7%
Change in Fund Balance	3,886	(72,962)		-	(49,882)	
Beginning Balance	695,840	695,840		699,726	699,726	
Ending Balance	699,726	622,878		699,726	649,844	

**Cafeteria Fund**

	<u>Audited</u> <u>2009-2010</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2010</u>	<u>%</u>	<u>Original</u> <u>Budget</u> <u>2010-2011</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2011</u>	<u>%</u>
<i>Receipts</i>						
Other Local Sources	2,030,684	1,117,851	55.0%	2,021,070	1,080,893	53.5%
State Sources	7,644	6,649	87.0%	13,987	6,141	43.9%
Federal Sources	193,456	83,936	43.4%	185,828	98,895	53.2%
	2,231,784	1,208,436	54.1%	2,220,885	1,185,929	53.4%
<i>Expenditures</i>						
Support Svcs. - Admin.	2,168,698	1,003,762	46.3%	2,219,788	1,010,004	45.5%
	2,168,698	1,003,762	46.3%	2,219,788	1,010,004	45.5%
Change in Fund Balance	63,086	204,674		1,097	175,925	
Beginning Balance	274,282	274,282		337,368	337,368	
Ending Balance	337,368	478,956		338,465	513,293	

**OAK PARK AND RIVER FOREST HIGH SCHOOL DISTRICT 200**  
**Monthly Financial Statements**  
**January 2011**

**Operations and Maintenance Fund**

	<u>Audited</u> <u>2009-2010</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2010</u>	<u>%</u>	<u>Original</u> <u>Budget</u> <u>2010-2011</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2011</u>	<u>%</u>
<i>Receipts</i>						
Property Taxes	6,136,075	2,884,314	47.0%	5,990,710	2,735,706	45.7%
Other Local Sources	2,297,496	873,242	38.0%	962,216	981,799	102.0%
	<u>8,433,571</u>	<u>3,757,556</u>	44.6%	<u>6,952,926</u>	<u>3,717,505</u>	53.5%
<i>Expenditures</i>						
Support Svcs. - Admin.	8,823,475	3,756,326	42.6%	5,368,583	2,658,748	49.5%
	<u>8,823,475</u>	<u>3,756,326</u>	42.6%	<u>5,368,583</u>	<u>2,658,748</u>	49.5%
<i>Other Sources/(Uses)</i>						
Transfers	1,035,354	1,000,000	96.6%	26,210	-	0.0%
Transfers	-	-	N/A	(1,610,000)	(1,610,000)	100.0% 1
	<u>1,035,354</u>	<u>1,000,000</u>	96.6%	<u>(1,583,790)</u>	<u>(1,610,000)</u>	101.7%
Change in Fund Balance	645,450	1,001,230		553	(551,243)	
Beginning Balance	<u>9,044,358</u>	<u>9,044,358</u>		<u>9,689,808</u>	<u>9,689,808</u>	
Ending Balance	<u>9,689,808</u>	<u>10,045,588</u>		<u>9,690,361</u>	<u>9,138,565</u>	

1. Transfer to Capital Projects fund per the budget.

**Life Safety Fund**

	<u>Audited</u> <u>2009-2010</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2010</u>	<u>%</u>	<u>Original</u> <u>Budget</u> <u>2010-2011</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2011</u>	<u>%</u>
<i>Receipts</i>						
Property Taxes	1,883,021	632,198	33.6%	2,090,611	1,044,045	49.9% 1
Other Local Sources	3,697	513	13.9%	301,670	73	0.0%
	<u>1,886,718</u>	<u>632,711</u>	33.5%	<u>2,392,281</u>	<u>1,044,118</u>	43.6%
<i>Expenditures</i>						
Support Svcs. - Business	1,474,581	904,409	61.3%	1,701,822	1,641,980	96.5%
	<u>1,474,581</u>	<u>904,409</u>	61.3%	<u>1,701,822</u>	<u>1,641,980</u>	96.5%
<i>Other Sources/(Uses)</i>						
Transfers	(618,263)	(618,263)	100.0%	(614,263)	-	0.0%
	<u>(618,263)</u>	<u>(618,263)</u>		<u>(614,263)</u>	<u>-</u>	
Change in Fund Balance	(206,126)	(889,961)		76,196	(597,862)	
Beginning Balance	<u>355,137</u>	<u>355,137</u>		<u>149,011</u>	<u>149,011</u>	
Ending Balance	<u>149,011</u>	<u>(534,824)</u>		<u>225,207</u>	<u>(448,851)</u>	

1. Life Safety levy was increased for the 2009 levy compared to the 2008 levy and therefore the increase in collections in the current year.

**OAK PARK AND RIVER FOREST HIGH SCHOOL DISTRICT 200**  
**Monthly Financial Statements**  
**January 2011**

**Bond and Interest Fund**

	<b>Audited</b>	<b>Fiscal to Date</b>		<b>Original</b>	<b>Fiscal to Date</b>	
	<b>2009-2010</b>	<b>January 31</b>	<b>%</b>	<b>Budget</b>	<b>January 31</b>	<b>%</b>
		<b>2010</b>		<b>2010-2011</b>	<b>2011</b>	
<i><b>Receipts</b></i>						
Property Taxes	3,052,500	1,553,706	50.9%	2,868,619	1,354,486	47.2%
Other Local Sources	35,354	25,491	72.1%	26,210	3,772	14.4%
	<u>3,087,854</u>	<u>1,579,197</u>	51.1%	<u>2,894,829</u>	<u>1,358,258</u>	46.9%
<i><b>Expenditures</b></i>						
Debt Service	4,787,112	4,431,631	92.6%	3,500,790	3,142,653	89.8%
	<u>4,787,112</u>	<u>4,431,631</u>	92.6%	<u>3,500,790</u>	<u>3,142,653</u>	89.8%
<i><b>Other Sources/(Uses)</b></i>						
Principal on Bonds Sold	10,810,000	10,810,000	100.0%	-	-	N/A
Premium on Bonds Sold	801,095	801,095	100.0%	-	-	N/A
Payment to Escrow	(11,468,408)	(11,468,408)	100.0%	-	-	N/A
Transfers	618,263	618,263	100.0%	614,263	-	0.0%
Transfers	(35,354)	-	0.0%	(26,210)	-	0.0%
	<u>725,596</u>	<u>760,950</u>	104.9%	<u>588,053</u>	<u>-</u>	0.0%
Change in Fund Balance	(973,662)	(2,091,484)		(17,908)	(1,784,395)	
Beginning Balance	2,468,889	2,468,889		1,495,227	1,495,227	
Ending Balance	<u>1,495,227</u>	<u>377,405</u>		<u>1,477,319</u>	<u>(289,168)</u>	

**Transportation Fund**

	<b>Audited</b>	<b>Fiscal to Date</b>		<b>Original</b>	<b>Fiscal to Date</b>	
	<b>2009-2010</b>	<b>January 31</b>	<b>%</b>	<b>Budget</b>	<b>January 31</b>	<b>%</b>
		<b>2010</b>		<b>2010-2011</b>	<b>2011</b>	
<i><b>Receipts</b></i>						
Property Taxes	938,197	460,654	49.1%	842,131	401,334	47.7% 1
Other Local Sources	45,423	30,834	67.9%	22,016	7,505	34.1%
State Sources	850,067	592,479	69.7%	645,379	425,846	66.0%
	<u>1,833,687</u>	<u>1,083,967</u>	59.1%	<u>1,509,526</u>	<u>834,685</u>	55.3%
<i><b>Expenditures</b></i>						
Support Svcs. - Business	1,417,211	651,859	46.0%	1,375,537	645,744	46.9%
	<u>1,417,211</u>	<u>651,859</u>	46.0%	<u>1,375,537</u>	<u>645,744</u>	46.9%
<i><b>Other Sources/(Uses)</b></i>						
Other source	31,000	-	0.0%	-	-	N/A
	<u>31,000</u>	<u>-</u>		<u>-</u>	<u>-</u>	
Change in Fund Balance	447,476	432,108		133,989	188,941	
Beginning Balance	2,114,846	2,114,846		2,562,322	2,562,322	
Ending Balance	<u>2,562,322</u>	<u>2,546,954</u>		<u>2,696,311</u>	<u>2,751,263</u>	

1. Property tax bills were not sent out until mid November and collections are still behind last year. Several large distributions have been received in January.

**OAK PARK AND RIVER FOREST HIGH SCHOOL DISTRICT 200**  
**Monthly Financial Statements**  
**January 2011**

**Illinois Municipal Retirement/Social Security Fund**

	<b>Audited</b>	<b>Fiscal to Date</b>		<b>Original</b>	<b>Fiscal to Date</b>	
	<b>2009-2010</b>	<b>January 31</b>	<b>%</b>	<b>Budget</b>	<b>January 31</b>	<b>%</b>
	<b>2010</b>	<b>2011</b>		<b>2010-2011</b>	<b>2011</b>	
<b>Receipts</b>						
Property Taxes	2,362,524	1,134,543	48.0%	2,314,608	1,032,644	44.6%
Other Local Sources	106,550	18,282	17.2%	79,730	5,546	7.0%
	<u>2,469,074</u>	<u>1,152,825</u>	46.7%	<u>2,394,338</u>	<u>1,038,190</u>	43.4%
<b>Expenditures</b>						
General Instruction	336,245	148,174	44.1%	414,745	174,965	42.2%
Special Education	190,309	80,106	42.1%	224,800	88,376	39.3%
Vocational Programs	26,406	13,949	52.8%	25,273	9,825	38.9%
Interscholastic Programs	109,477	52,887	48.3%	121,161	56,742	46.8%
Summer School	9,143	5,364	58.7%	9,844	5,477	55.6%
Drivers Education	5,560	2,463	44.3%	9,239	2,928	31.7%
Other Instructional	1,241	536	43.2%	1,232	534	43.3%
Support Svcs. - Pupil	336,130	151,871	45.2%	393,359	169,269	43.0%
Support Svcs. - Admin.	824,926	447,194	54.2%	898,271	460,943	51.3%
	<u>1,839,437</u>	<u>902,544</u>	49.1%	<u>2,097,924</u>	<u>969,059</u>	46.2%
Change in Fund Balance	629,637	250,281		296,414	69,131	
Beginning Balance	<u>1,323,641</u>	<u>1,323,641</u>		<u>1,953,278</u>	<u>1,953,278</u>	
Ending Balance	<u>1,953,278</u>	<u>1,573,922</u>		<u>2,249,692</u>	<u>2,022,409</u>	

**Capital Projects Fund**

	<b>Audited</b>	<b>Fiscal to Date</b>		<b>Original</b>	<b>Fiscal to Date</b>	
	<b>2009-2010</b>	<b>January 31</b>	<b>%</b>	<b>Budget</b>	<b>January 31</b>	<b>%</b>
	<b>2010</b>	<b>2011</b>		<b>2010-2011</b>	<b>2011</b>	
<b>Receipts</b>						
Other Local Sources	-	-	N/A	300,000	527	0.2%
	<u>-</u>	<u>-</u>	N/A	<u>300,000</u>	<u>527</u>	0.2%
<b>Expenditures</b>						
Support Svcs. - Business	-	-	N/A	1,910,000	1,430,248	74.9%
	<u>-</u>	<u>-</u>	N/A	<u>1,910,000</u>	<u>1,430,248</u>	74.9%
<b>Other Sources/(Uses)</b>						
Transfers	-	-	N/A	1,610,000	1,610,000	100.0%
	<u>-</u>	<u>-</u>		<u>1,610,000</u>	<u>1,610,000</u>	
Change in Fund Balance	-	-		-	180,279	
Beginning Balance	<u>-</u>	<u>-</u>		<u>-</u>	<u>-</u>	
Ending Balance	<u>-</u>	<u>-</u>		<u>-</u>	<u>180,279</u>	

1. Transfer from O&M fund to establish the Capital Projects fund per the budget.

**OAK PARK AND RIVER FOREST HIGH SCHOOL DISTRICT 200**  
**Monthly Financial Statements**  
**January 2011**

**Working Cash Fund**

	<b>Audited 2009-2010</b>	<b>Fiscal to Date January 31 2010</b>	<b>%</b>	<b>Original Budget 2010-2011</b>	<b>Fiscal to Date January 31 2011</b>	<b>%</b>
<i>Receipts</i>						
Property Taxes	1,091,083	535,987	49.1%	1,045,305	527,572	50.5%
Other Local Sources	129,470	88,392	68.3%	69,485	22,132	31.9%
	<u>1,220,553</u>	<u>624,379</u>	51.2%	<u>1,114,790</u>	<u>549,704</u>	49.3%
<i>Expenditures</i>						
Transfers	-	-	N/A	-	-	N/A
	<u>-</u>	<u>-</u>	N/A	<u>-</u>	<u>-</u>	N/A
<i>Other Sources/(Uses)</i>						
Principal on Bonds Sold	1,000,000	1,000,000	100.0%	-	-	N/A
Transfers	<u>(1,000,000)</u>	<u>(1,000,000)</u>	100.0%	<u>-</u>	<u>-</u>	N/A
	<u>-</u>	<u>-</u>		<u>-</u>	<u>-</u>	
Change in Fund Balance	1,220,553	624,379		1,114,790	549,704	
Beginning Balance	5,300,950	5,300,950		6,521,503	6,521,503	
Ending Balance	<u>6,521,503</u>	<u>5,925,329</u>		<u>7,636,293</u>	<u>7,071,207</u>	

**Tort Immunity Fund**

	<b>Audited 2009-2010</b>	<b>Fiscal to Date January 31 2010</b>	<b>%</b>	<b>Original Budget 2010-2011</b>	<b>Fiscal to Date January 31 2011</b>	<b>%</b>
<i>Receipts</i>						
Property Taxes	1,263,583	632,689	50.1%	1,104,552	527,035	47.7%
Other Local Sources	38,162	23,653	62.0%	20,076	5,966	29.7%
	<u>1,301,745</u>	<u>656,342</u>	50.4%	<u>1,124,628</u>	<u>533,001</u>	47.4%
<i>Expenditures</i>						
Support Svcs. - Admin.	869,427	706,790	81.3%	1,121,112	714,235	63.7%
	<u>869,427</u>	<u>706,790</u>	81.3%	<u>1,121,112</u>	<u>714,235</u>	63.7%
Change in Fund Balance	432,318	(50,448)		3,516	(181,234)	
Beginning Balance	<u>1,917,776</u>	<u>1,917,776</u>		<u>2,350,094</u>	<u>2,350,094</u>	
Ending Balance	<u>2,350,094</u>	<u>1,867,328</u>		<u>2,353,610</u>	<u>2,168,860</u>	

**OAK PARK AND RIVER FOREST HIGH SCHOOL DISTRICT 200**  
**Monthly Financial Statements**  
**January 2011**

**Dental Self Insurance Fund**

	<u>Audited</u> <u>2009-2010</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2010</u>	<u>%</u>	<u>Original</u> <u>Budget</u> <u>2010-2011</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2011</u>	<u>%</u>
<i>Receipts</i>						
Insurance Premiums	409,548	197,102	48.1%	452,853	195,014	43.1%
Other Local Sources	3,680	2,509	68.2%	2,000	511	25.6%
	<u>413,228</u>	<u>199,611</u>	<u>48.3%</u>	<u>454,853</u>	<u>195,525</u>	<u>43.0%</u>
<i>Expenditures</i>						
Staff Services	<u>407,364</u>	<u>186,947</u>	<u>45.9%</u>	<u>452,853</u>	<u>204,409</u>	<u>45.1%</u>
Change in Fund Balance	5,864	12,664		2,000	(8,884)	
Beginning Balance	<u>143,399</u>	<u>143,399</u>		<u>149,263</u>	<u>149,263</u>	
Ending Balance	<u>149,263</u>	<u>156,063</u>		<u>151,263</u>	<u>140,379</u>	

**Medical Self Insurance Fund**

	<u>Audited</u> <u>2009-2010</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2010</u>	<u>%</u>	<u>Original</u> <u>Budget</u> <u>2010-2011</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2011</u>	<u>%</u>
<i>Receipts</i>						
Insurance Premiums	4,732,751	2,567,088	54.2%	5,577,698	3,311,567	59.4%
Other Local Sources	52,274	35,277	67.5%	20,000	9,501	47.5%
	<u>4,785,025</u>	<u>2,602,365</u>	<u>54.4%</u>	<u>5,597,698</u>	<u>3,321,068</u>	<u>59.3%</u>
<i>Expenditures</i>						
Staff Services	<u>4,541,907</u>	<u>1,863,575</u>	<u>41.0%</u>	<u>5,577,698</u>	<u>2,393,629</u>	<u>42.9%</u>
Change in Fund Balance	243,118	738,790		20,000	927,439	
Beginning Balance	<u>1,594,968</u>	<u>1,594,968</u>		<u>1,838,086</u>	<u>1,838,086</u>	
Ending Balance	<u>1,838,086</u>	<u>2,333,758</u>		<u>1,858,086</u>	<u>2,765,525</u>	

**Self-Insurance Workers' Comp Fund**

	<u>Audited</u> <u>2009-2010</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2010</u>	<u>%</u>	<u>Original</u> <u>Budget</u> <u>2010-2011</u>	<u>Fiscal to Date</u> <u>January 31</u> <u>2011</u>	<u>%</u>
<i>Receipts</i>						
Insurance Premiums	-	-	N/A	-	-	N/A
Other Local Sources	-	-	N/A	-	-	N/A
Transfers	-	-	N/A	-	-	N/A
	<u>-</u>	<u>-</u>		<u>-</u>	<u>-</u>	
<i>Expenditures</i>						
Staff Services	<u>-</u>	<u>-</u>	<u>N/A</u>	<u>-</u>	<u>-</u>	<u>N/A</u>
Change in Fund Balance	-	-		-	-	
Beginning Balance	<u>15,857</u>	<u>15,857</u>		<u>15,857</u>	<u>15,857</u>	
Ending Balance	<u>15,857</u>	<u>15,857</u>		<u>15,857</u>	<u>15,857</u>	



***Oak Park and River Forest High School  
District 200***

*201 North Scoville Avenue • Oak Park, IL 60302-2296*

TO: Board of Education

FROM: Cheryl Witham

DATE: February 15, 2011

RE: Treasurer's Reports

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**BACKGROUND**

It is a requirement that the Board of Education accepts and approves the monthly Treasurer's Reports.

**SUMMARY OF FINDINGS**

Attached is the Treasurer Report for January, 2011.

**RECOMMENDATIONS (OR FUTURE DIRECTIONS)**

The January 2011 Treasurer's Report will be presented to the Board of Education for approval at the February 24<sup>th</sup>, Board of Education meeting

Oak Park & River Forest High School District 200  
Treasurers Report  
January 31, 2011

	<u>Funds</u>	<u>Opening Cash Balance 01/01/11</u>	<u>Cash Receipts</u>	<u>Cash Disbursements</u>	<u>Adjustments to Cash (JE's)</u>	<u>Ending Cash Balance 01/31/11</u>	<u>% of Total</u>
10	Education	67,267,351.14	5,449,390.87	(3,036,081.87)	(441,730.13)	69,238,930.01	72.29%
14	Food Service	350,586.04	268,092.87	(126,886.67)	(8,870.49)	482,921.75	0.50%
15	Book Store	283,122.38	60,117.92	(48,796.62)	(1,580.03)	292,863.65	0.31%
	<b>Total - Education Fund</b>	<b>67,901,059.56</b>	<b>5,777,601.66</b>	<b>(3,211,765.16)</b>	<b>(452,180.65)</b>	<b>70,014,715.41</b>	<b>73.10%</b>
20	Operations, Building & Maintenance	8,602,902.81	760,661.45	(402,694.08)	(50,298.72)	8,910,571.46	9.30%
30	Bond & Interest Fund	(605,192.05)	300,095.93	(1,335.00)	-	(306,431.12)	-0.32%
40	Transportation Fund	2,348,483.16	89,118.68	(114,991.76)	(1,740.00)	2,320,870.08	2.42%
50	IMRF & SS Fund	1,934,960.39	229,064.25	(153,435.91)	30.54	2,010,619.27	2.10%
60	Site & Construction	317,731.66	29.52	(137,482.60)	-	180,278.58	0.19%
70	Working Cash	6,946,079.36	117,987.14	-	-	7,064,066.50	7.38%
80	Tort Immunity	2,096,409.93	116,678.23	(45,531.97)	(5,725.45)	2,161,830.74	2.26%
81	Dental Self Insurance	164,768.04	27.10	(37,251.12)	37,966.76	165,510.78	0.17%
82	Medical Self Insurance	3,059,223.69	507.42	(437,206.79)	476,292.94	3,098,817.26	3.24%
83	Workers' Comp Self Insurance	15,857.04	-	-	-	15,857.04	0.02%
84	Harris - PMA	331,908.67	52,332.10	(5,930.45)	(4,345.42)	373,964.90	0.39%
84	Community Bank	243,714.28	51,165.10	(61,289.71)	-	233,589.67	0.24%
	<b>Total - Activity Funds</b>	<b>575,622.95</b>	<b>103,497.20</b>	<b>(67,220.16)</b>	<b>(4,345.42)</b>	<b>607,554.57</b>	<b>0.63%</b>
90	Fire Prevention & Safety	(697,784.63)	234,653.12	-	-	(463,131.51)	-0.48%
	<b>Total - All Funds</b>	<b>\$ 92,660,121.91</b>	<b>\$ 7,729,921.70</b>	<b>\$ (4,608,914.55)</b>	<b>\$ -</b>	<b>\$ 95,781,129.06</b>	<b>100.00%</b>

**Summary of adjustments to cash:**

Reclassification of food service chargebacks.  
Reclassification of bookstore chargebacks.  
Reclassification of expenditures  
PPO/Pharmacy reclassification.

Oak Park & River Forest High School District 200  
Cash and Investments  
January 31, 2011

	<u>Account Balance</u>	<u>Treasurer's Control</u>	<u>% of Total</u>
<b>Harris Bank Comingled Account (treas ofc.)</b>			
Statement CTTO	126,015.94		
Less: Outstanding Checks	-		
Plus: Deposits in Transit	-		
Adjusted	<u>126,015.94</u>	126,015.94	0.13%
<b>Harris ISDLAF Account (Liquid &amp; Max)</b>			
Statement Balance	95,815,846.98		
Less: Outstanding Checks	(568,158.64)		
Plus: Deposits in Transit	109,537.37		
Adjusted	<u>95,357,225.71</u>		99.56%
<b>Community Bank Student Activity Account</b>			
Statement Balance	265,929.74		
Less: Outstanding Checks	(32,387.07)		
Plus: Deposits in Transit	47.00		
Adjusted	<u>233,589.67</u>		0.24%
<b>Community Bank Imprest Account</b>			
Statement Balance	18,538.17		
Less: Outstanding Checks	(1,640.43)		
Plus: Deposits in Transit	-		
Adjusted	<u>16,897.74</u>		0.02%
<b>Petty Cash</b>	<u>7,400.00</u>		0.01%
<b>Workers Compensation Escrow</b>	<u>40,000.00</u>		0.04%
<b>Total Cash and Investments</b>	<b>\$ 95,781,129.06</b>	<b>\$ 126,015.94</b>	<b>100.00%</b>

Note: Petty cash number includes \$2,000 that is in the Athletic Imprest account maintained by the Athletic Department.

Oak Park & River Forest High School District 200  
Schedule of Investments  
January 31, 2011

By Financial Institution	Average Interest Rate *	Investment Value 01/31/11	Prior Month	
			% of Total	% of Total
Harris ISDLAF - Liquid MM	0.02%	1,267,589.77	1.32%	1.25%
Harris ISDLAF - Max MM	0.06%	969,512.92	1.01%	16.56%
Harris ISDLAF - SDA	0.15%	2,705,986.78	2.82%	2.92%
Harris ISDLAF - CD's	0.44%	65,042,869.47	67.79%	73.46%
Harris ISDLAF - Gov't Securities	0.43%	3,929,888.04	4.10%	5.67%
Harris ISDLAF - Term Series	0.27%	21,900,000.00	22.83%	0.00%
Harris - CTTO MM	*	126,015.94	0.13%	0.14%
<b>Total All Investments by Institution</b>		<b>95,941,862.92</b>	<b>100.00%</b>	<b>100.00%</b>
By Investment Type	Average Interest Rate *	Investment Value 01/31/11	Prior Month	
			% of Total	% of Total
CD's	0.44%	65,042,869.47	67.79%	73.46%
Government Securities	0.43%	3,929,888.04	4.10%	5.67%
Term Series	0.27%	21,900,000.00	22.83%	0.00%
Money Market	0.08%	5,069,105.41	5.28%	20.86%
<b>Total All Investments by Type</b>		<b>95,941,862.92</b>	<b>100.00%</b>	<b>100.00%</b>
By Maturity Age	Average Interest Rate *	Investment Value 01/31/11	Prior Month	
			% of Total	% of Total
1 month	0.24%	4,799,285.61	5.00%	6.04%
2 months	0.78%	4,400,000.00	4.59%	5.18%
3 months	0.56%	3,700,000.00	3.86%	4.75%
4-6 months	0.51%	17,593,500.00	18.34%	17.36%
7-9 months	0.35%	42,531,045.00	44.33%	25.18%
10-12 months	0.25%	4,330,369.47	4.51%	6.06%
1 year +	0.49%	13,518,557.43	14.09%	14.58%
2 years +	0.00%	-	0.00%	0.00%
Mature on demand	0.08%	5,069,105.41	5.28%	20.86%
<b>Total Investments</b>		<b>95,941,862.92</b>	<b>100.00%</b>	<b>100.00%</b>

\* The rate of interest is not known for funds invested with the Trustee of the former CTTO.

Comparative Interest Rate Information (as of February 7)

Fixed Income Type of Security	60 Days	90 Days	120 Days	180 Days	270 Days	1		2	
						Year	Months	Year	Months
CD's	0.00% - 0.10%	0.00% - 0.15%	0.00% - 0.15%	0.09% - 0.25%	0.15% - 0.50%	0.20% - 0.50%	0.25% - 0.60%	0.40% - 0.75%	0.48% - 0.68%
Government Agency	N/A	N/A	N/A	N/A	0.03%	0.19%	0.48%	0.51%	0.57%
Government Treasury	N/A	N/A	N/A	0.04%	0.10%	0.20%	0.51%		
<b>Liquid Asset Funds</b>	<b>7 Day Effective</b>								
Liquid Class	0.02%								
Max Class	0.09%								