



**NOTICE OF MEETING OF THE WOODBURY COUNTY BOARD OF SUPERVISORS  
(OCTOBER 9, 2018) (WEEK 40 OF 2018)**

Live streaming at:  
<https://www.youtube.com/user/woodburycountyiowa>

Agenda and Minutes available at:  
[www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov)

Rocky L. De Witt 253-0421 <a href="mailto:rdewitt@woodburycountyiowa.gov">rdewitt@woodburycountyiowa.gov</a>	Marty J. Pottebaum 251-1799 <a href="mailto:mpottebaum@woodburycountyiowa.gov">mpottebaum@woodburycountyiowa.gov</a>	Keith W. Radig 560-6542 <a href="mailto:kradig@woodburycountyiowa.gov">kradig@woodburycountyiowa.gov</a>	Jeremy J. Taylor 259-7910 <a href="mailto:jtaylor@woodburycountyiowa.gov">jtaylor@woodburycountyiowa.gov</a>	Matthew A. Ung 490-7852 <a href="mailto:matthewung@woodburycountyiowa.gov">matthewung@woodburycountyiowa.gov</a>
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You are hereby notified a meeting of the Woodbury County Board of Supervisors will be held October 9, 2018 at **4:30 p.m.** in the Basement of the Courthouse, 620 Douglas Street, Sioux City, Iowa for the purpose of taking official action on the agenda items shown hereinafter and for such other business that may properly come before the Board.

This is a formal meeting during which the Board may take official action on various items of business. If you wish to speak on an item, please follow the seven participation guidelines adopted by the Board.

1. Anyone may address the Board on any agenda item after initial discussion by the Board.
2. Speakers will approach the microphone one at a time and be recognized by the Chair.
3. Speakers will give their name, their address, and then their statement.
4. Everyone will have an opportunity to speak. Therefore, your remarks may be limited to three minutes on any one item.
5. At the beginning of the discussion on any item, the Chair may request statements in favor of an action be heard first followed by statements in opposition to the action.
6. Any concerns or questions you may have which do not relate directly to a scheduled item on the agenda will also be heard under the first or final agenda item "Citizen Concerns."
7. For the benefit of all in attendance, please silence cell phones and other devices while in the Board Chambers.

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## **AGENDA**

**4:30 p.m.** Call Meeting to Order – Pledge of Allegiance to the Flag – Moment of Silence

- |                           |             |
|---------------------------|-------------|
| 1. Citizen Concerns       | Information |
| 2. Approval of the agenda | Action      |

### **Consent Agenda**

**Items 3 through 8 constitute a Consent Agenda of routine action items to be considered by one motion. Items pass unanimously unless a separate vote is requested by a Board Member.**

3. Approval of the minutes of the October 2, 2018 meeting
4. Approval of claims
5. County Auditor – Patrick Gill  
Receive Auditor’s Quarterly Report
6. Approval of re-appointment of Loyanne Jensen to the Woodbury County Library Board
7. Board Administration – Karen James
  - a. Approval of lifting tax suspension for J.D.
  - b. Approval of lifting tax suspension for petitioners who failed to re-certify their income or income does not qualify for continued tax suspension



## CALENDAR OF EVENTS

- WED., OCT. 10**      **8:05 a.m.**      Woodbury County Information Communication Commission, First Floor Boardroom
- 10:00 a.m.**      StarComm Board Meeting, Security Institute
- 12:00 p.m.**      District Board of Health Meeting, 1014 Nebraska St.
- THUR., OCT. 11**      **12:00 p.m.**      SIMPCO Board of Directors, 1122 Pierce St.
- 4:00 p.m.**      Conservation Board Meeting, Dorothy Pecaut Nature Center, Stone Park
- TUES., OCT. 16**      **3:00 p.m.**      Historic Preservation Committee Meeting, First Floor Boardroom
- WED., OCT. 17**      **10:00 a.m.**      Siouxland Center for Active Generations Board of Directors Meeting, 313 Cook St.
- 12:00 p.m.**      Siouxland Economic Development Corporation Meeting, 617 Pierce St., Ste. 202
- THUR., OCT. 18**      **4:30 p.m.**      Community Action Agency of Siouxland Board Meeting, 2700 Leech Avenue
- TUES., OCT. 23**      **1:00 p.m.**      Sioux Rivers Regional Governance Board Meeting, Plymouth County Courthouse Annex Building, 215 4th Ave. S.E., Le Mars, Iowa
- 6:00 p.m.**      Zoning Commission Meeting, First Floor Boardroom
- MONDAY, NOV. 5**      **6:00 p.m.**      Board of Adjustment meeting, First Floor Boardroom
- TUESDAY, NOV. 6**      **4:45 p.m.**      Veteran Affairs Meeting, Veteran Affairs Office, 1211 Tri-View Ave.
- WED., NOV. 7**      **9:00 a.m.**      Loess Hills Alliance Protection Committee Meeting, Pisgah, Iowa
- 10:30 a.m.**      Loess Hills Alliance Stewardship Meeting
- 12:00 p.m.**      District Board of Health Meeting, 1014 Nebraska St.
- 1:00 p.m.**      Loess Hills Alliance Executive Meeting
- THUR., NOV. 8**      **4:30 p.m.**      Conservation Board Meeting, Dorothy Pecaut Nature Center, Stone Park
- WED., NOV. 14**      **8:05 a.m.**      Woodbury County Information Communication Commission, First Floor Boardroom
- 6:30 p.m.**      911 Service Board Meeting, Public Safety Center, Climbing Hill
- 8:00 p.m.**      County's Mayor Association Meeting, Public Safety Center, Climbing Hill

**The following Boards/Commission have vacancies:** Commission to Assess Damages - Category A, Category B, Category C and Category D, Civil Service Commission; Library Board of Trustees

**Woodbury County is an Equal Opportunity Employer. In compliance with the Americans with Disabilities Act, the County will consider reasonable accommodations for qualified individuals with disabilities and encourages prospective employees and incumbents to discuss potential accommodations with the Employer.**

*Federal and state laws prohibit employment and/or public accommodation discrimination on the basis of age, color, creed, disability, gender identity, national origin, pregnancy, race, religion, sex, sexual orientation or veteran's status. If you believe you have been discriminated against, please contact the Iowa Civil Rights Commission at 800-457-4416 or Iowa Department of Transportation's civil rights coordinator. If you need accommodations because of a disability to access the Iowa Department of Transportation's services, contact the agency's affirmative action officer at 800-262-0003.*

**OCTOBER 2, 2018, THIRTY-NINTH MEETING OF THE WOODBURY COUNTY BOARD OF SUPERVISORS**

The Board of Supervisors met on Tuesday, October 2, 2018 at 4:30 p.m. Board members present were Ung, De Witt, Pottebaum, Radig, and Taylor. Staff members present were Dennis Butler, Budget/Tax Analyst, Karen James, Board Administrative Assistant, Melissa Thomas, Human Resources Director, and Patrick Gill, Auditor/Clerk to the Board.

The regular meeting was called to order with the Pledge of Allegiance to the Flag and a Moment of Silence.

- 1. Flora Lee, Sioux City, asked for information regarding the change from Sioux River’s Mental Health Region to the Rolling Hills Region. Diane McTeer from Juvenile Detention, updated the Board on the food procurement contract process.
- 2. Motion by De Witt second by Radig to approve the agenda for October 2, 2018. Carried 5-0. Copy filed.

Motion by Taylor second by Radig to approve the following items by consent:

- 3. To approve minutes of the September 25, 2018 meeting. Copy filed.
- 4. To approve the claims totaling \$1,347,064.66. Copy filed.
- 5. To approve and authorize the Chairperson to sign a Resolution authorizing tax abatement for Anthon Community Fire Department, parcel #874305201001.

**WOODBURY COUNTY, IOWA  
RESOLUTION 12,785  
RESOLUTION APPROVING ABATEMENT OF TAXES**

**WHEREAS**, Anthon Community Fire Department is the titleholder of real estate Parcel #874305201001 located in the City of Anthon, Iowa and legally described as follows:

Parcel #874305201001

**ANTHON CITY OF AUD SUB DIV 32/33-88 -43 AN IRREG TCT NE**

**WHEREAS**, the above-stated property has taxes owing for the 2018/2019, tax year and the parcel is owned by Anthon Community Fire Department and

**WHEREAS**, the organization, namely Anthon Community Fire Department is failing to immediately pay the taxes due; and

**WHEREAS**, the Board of Supervisors sees that good cause exists for the abatement of these taxes; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Woodbury County Board of Supervisors hereby abates the taxes owing on the above parcel according to Code of Iowa, 427.3 for the taxes owed for the 2018/2019 tax year and hereby directs the Woodbury County Treasurer to abate these aforementioned taxes from the tax records.

**SO RESOLVED** this 2nd day of October 2018.  
WOODBURY COUNTY BOARD OF SUPERVISORS  
Copy filed.

- 6. To approve the permit to work in the right of way for Northern Natural Gas. Copy filed.
- 7. To receive the appointment of Karl Braun, 1190 Dallas Ave., Lawton, as Trustee of Concord Township. The appointment was made on September 21, 2018, to fill the position previously held by Roger Milligan, until the next regular election. Copy filed.

Carried 5-0.

- 8. Motion by Taylor second by Radig to approve and receive for signatures a Resolution for Proclamation for Domestic Violence Awareness Month. Carried 5-0.

**WOODBURY COUNTY, IOWA**  
**RESOLUTION #12,786**  
**PROCLAMATION FOR DOMESTIC VIOLENCE AWARENESS MONTH**

WHEREAS, domestic violence is a serious crime affecting individuals and families in all Siouxland communities; all races, ages, income levels, lifestyles and sexes; and in fact is probably affecting someone you know; and every 9 seconds someone experiences the crime of domestic violence; and

WHEREAS, one in three women will be a victim of violence in her lifetime; domestic violence violates an individual's human rights by destroying dignity, security, and self-worth due to the systematic use of physical, emotional, sexual, psychological, and economic control or abuse; CSADV works every day to help end these acts of violence and to help rebuild the lives of the survivors; and

WHEREAS, in Siouxland, the Council on Sexual Assault & Domestic Violence is available 24 hours a day and last year responded to nearly 2000 victims, provided 11,026 nights of shelter to 413 adults and 305 children fleeing domestic abuse and despite high census, no one in an unsafe situation was turned away; and

WHEREAS, the impact of domestic violence affects all of the members of the community, and only a coordinated community response will put a stop to these atrocious crimes and assure funding is continuously available to provide these lifesaving services; and

NOW, THEREFORE, I, Rocky De Witt, Chairman, on behalf of the Woodbury County Board of Supervisors, do hereby proclaim the month of October, 2018 as

*"DOMESTIC VIOLENCE AWARENESS MONTH"*  
 in Woodbury County, Iowa and urge all citizens to actively participate in the scheduled events and programs and to think about the fact that it is someone you know.

BE IT SO RESOLVED this 2<sup>nd</sup> day of October, 2018.  
 WOODBURY COUNTY BOARD OF SUPERVISORS  
 Copy filed.

Presentation of Proclamation for Domestic Violence Awareness Month.

- 9. Motion by Radig second by Pottebaum to approve and receive for signatures a Resolution for Proclamation for National Disability Employment Awareness Month. Carried 5-0.

**WOODBURY, COUNTY**  
**RESOLUTION #12,787**  
**PROCLAMATION FOR NATIONAL DISABILITY EMPLOYMENT AWARENESS MONTH**

WHEREAS, persons with disabilities have the right and responsibility to maximize their abilities; and

WHEREAS, persons with disabilities have an equal capacity for productivity, independence and integration throughout society; and

WHEREAS, persons with disabilities are the minority group with the highest unemployment rate; and

WHEREAS, any person may become a member of this minority group at any time; and

WHEREAS, disability is not a deficiency but a vital part of the diversity of the human community; and

WHEREAS, through awareness, training and support, persons with disabilities can access opportunities to employment, enabling them to become integrated and contributing citizens of Iowa; and

WHEREAS, this year's theme is "America's workforce: empowering all"; and

WHEREAS, the Iowa commission of persons with disabilities of the Iowa department of human rights, promotes employment and maximized independence and integration of persons with disabilities throughout Iowa; and

NOW, THEREFORE, I, Rocky De Witt do hereby proclaim October 2018 as

***"NATIONAL DISABILITY EMPLOYMENT AWARENESS MONTH"***

*"As a time to educate about disability employment issues and celebrate the many and varied contributions of America's workers with disabilities in Woodbury County, Iowa."*

BE IT SO RESOLVED this 2<sup>nd</sup> day of October 2018.  
WOODBURY COUNTY BOARD OF SUPERVISORS  
Copy filed.

Presentation of Proclamation for National Disability Employment Awareness Month.

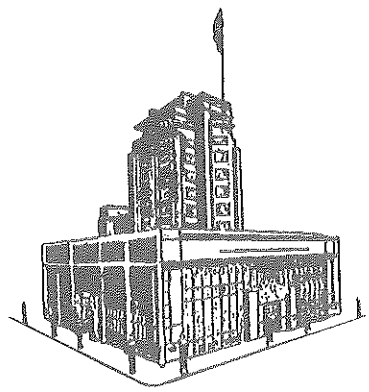
10. Information on the request for financial support of the Riverfront Development Project was presented by Matt Salvatore, Sioux City Parks and Recreation. Copy filed.
11. Motion by Radig second by Taylor to approve the work quoted by Guaranteed Roofing in the amount of \$2,831.41 for repairs on the 3<sup>rd</sup> floor roof of the Climbing Hill, Emergency Services building. Carried 5-0. Copy filed.
12. Motion by Taylor second by Pottebaum to approve the contracts for gravel production in the Railroad Pit, gravel production in the Briese Pit, and for hauling gravel to county stockpiles. Carried 5-0. Copy filed.
13. The Board heard reports on committee meetings.
14. No citizen concerns.
15. Board concerns.

The Board adjourned the regular meeting until October 9, 2018.

Meeting sign in sheet. Copy filed.

Office Of The  
**AUDITOR/RECORDER**  
Of Woodbury County  
PATRICK F. GILL  
Auditor/Recorder

Court House – Rooms 103  
620 Douglas  
Sioux City, Iowa 51101  
  
Phone (712) 279-6702  
Fax (712) 279-6629



**AUDITOR'S QUARTERLY REPORT**

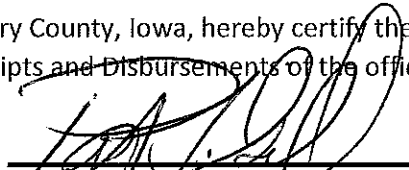
July 1, 2018 / September 30, 2018

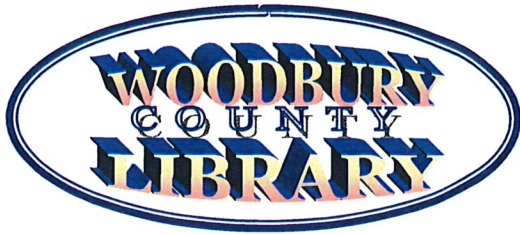
Patrick F. Gill, Woodbury County Auditor/Recorder

Payroll Taxes

Beginning Cash Balance	July 1, 2018		
Payroll Taxes		271.95	
Other		82.50	
Total Beginning Balance			354.45
Receipts:			
Payroll Taxes		2,735,145.90	
Interest		341.75	
Other			
Total Receipts			<u>2,735,487.65</u>
Total Resources			<b>2,735,842.10</b>
Disbursements:			
Payroll Taxes		2,212,562.35	
Interest Paid to Treasurer		82.50	
Other			
Total Disbursements			<b>2,212,644.85</b>
Ending Cash Balance	September 30, 2018		
Payroll Taxes		522,855.50	
Interest		341.75	
Total Ending Balance			<b>523,197.25</b>

I, Patrick F. Gill, County Auditor/Recorder of Woodbury County, Iowa, hereby certify the above to be a true and correct statement of the Receipts and Disbursements of the office of County Auditor for the 1st Quarter ending 09/30/18.

  
\_\_\_\_\_  
Patrick F. Gill, County Auditor/Recorder



#6

- 825 Main Street
- P.O. Box 625
- Merville, Ia. 51039

SEP 20 2018 PM 1:46

Karen James  
Administrative Coordinator  
Woodbury County Board of Supervisors  
Woodbury County Courthouse  
620 Douglas Street Room 104  
Sioux City, Ia.  
51101

September 17, 2018

Dear Karen,  
The Woodbury County Library Board would like to submit the following name to the County Board of Supervisors to be re-appointed to the Woodbury County Library Board.

1. Loyanne Jensen 501 Erin's Cove Lawton, Iowa 51030

Thank you, Karen for your services to the Woodbury County Library.  
I do appreciate your assistance and advice.

Sincerely,

A handwritten signature in blue ink that reads "Donna Chapman". The signature is written in a cursive style.

Donna Chapman  
Woodbury County Library Director



**WOODBURY COUNTY, IOWA  
BOARD ADMINISTRATION  
MEMORANDUM**

TO: Board of Supervisors  
FROM: Karen James, Administrative Assistant  
DATE: October 1, 2018  
RE: Lifting of Tax Suspensions

Please lift the tax suspension for J. D. as this person no longer wish to have the taxes suspended.

**WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM**

Date: 10/01/18

Weekly Agenda Date: 10/09/18

**ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN:** Karen James - Admin. Assistant

**WORDING FOR AGENDA ITEM:**

Approval of lifting tax suspensions for petitioners who failed to re-certify their income or income does not qualify for continued tax suspension

**ACTION REQUIRED:**

Approve Ordinance

Approve Resolution

Approve Motion

Public Hearing

Other: Informational

Attachments

**EXECUTIVE SUMMARY:**

Annually, the Board of Supervisors requires those receiving tax suspensions to re-certify their income. Those petitioners who fail to re-certify their income by the deadline or if their income does not qualify for continued tax suspension, will be turned over to the Board of Supervisors for action on lifting the tax suspension.

**BACKGROUND:**

**FINANCIAL IMPACT:**

None

**IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?**

Yes  No

**RECOMMENDATION:**

To lift the tax suspension of the petitioners that are listed on the attachment.

**ACTION REQUIRED / PROPOSED MOTION:**

Approval of lifting tax suspensions for petitioners who failed to re-certify their income or income does not qualify for continued tax suspension.

HUMAN RESOURCES DEPARTMENT

MEMORANDUM OF PERSONNEL TRANSACTIONS

DATE: October 9, 2018

\* PERSONNEL ACTION CODE:

- A- Appointment
- T - Transfer
- P - Promotion
- D - Demotion
- R-Reclassification
- E- End of Probation
- S - Separation
- O - Other

TO: **WOODBURY COUNTY BOARD OF SUPERVISORS**

NAME	DEPARTMENT	EFFECTIVE DATE	JOB TITLE	SALARY REQUESTED	% INCREASE	*	REMARKS
Steenholdt, Mikala	County Attorney	10-12-18	Attorney-HIDTA Grant			S	Resignation.
Luna, Daniel	County Sheriff	10-15-18	Civilian Jailer	\$19.28/hour		A	Job Vacancy Posted 8-22-18. Entry Level Salary: \$19.28/hour.
Romero, Katin	County Sheriff	10-21-18	Civilian Jailer			S	Resignation.
Andresen, Michael	Secondary Roads	10-24-18	Motor Grader Operator	\$23.15/hour		A	Job Vacancy Posted 6-27-18. Entry Level Salary: \$23.15/hour.
Lafave, Dawn	County Sheriff	10-31-18	Civilian Jailer	\$23.15/hour	10.8%=\$2.27/hour	R	Per CWA Civilian Officers Contract agreement, from Class 1 to Senior Class due to 6 years employment and Associate Degree.

APPROVED BY BOARD DATE: \_\_\_\_\_

MELISSA THOMAS, HR DIRECTOR: Melissa Thomas HR Director

**WOODBURY COUNTY**  
**HUMAN RESOURCES DEPARTMENT**

**TO:** Board of Supervisors and the Taxpayers of Woodbury County

**FROM:** Melissa Thomas, Human Resources Director

**SUBJECT:** Memorandum of Personnel Transactions

**DATE:** October 9, 2018

For the October 9, 2018 meeting of the Board of Supervisors and the Taxpayers of Woodbury County the Memorandum of Personnel Transactions will include:

1. County Attorney – HIDTA Attorney, Resignation.
2. County Sheriff Civilian Jailer, Appointment.
3. County Sheriff Civilian Jailer, Resignation.
4. Secondary Roads Motor Grader Operator, Appointment.
5. County Sheriff Civilian Jailer, from Class 1 to Senior Class.

Thank you

**HUMAN RESOURCES DEPARTMENT  
 WOODBURY COUNTY, IOWA**

**DATE: October 9, 2018**

**REQUEST TO DEAUTHORIZE COUNTY POSITION(S)**

DEPARTMENT	POSITION	APPROVED	DISAPPROVED
County Sheriff	Court Security Supervisor (Deauthorize to Authorize Civilian Lieutenant)		

\_\_\_\_\_  
 Chairman, Board of Supervisors

**HUMAN RESOURCES DEPARTMENT  
WOODBURY COUNTY, IOWA**

**DATE: October 9, 2018**

**AUTHORIZATION TO INITIATE HIRING PROCESS**

DEPARTMENT	POSITION	ENTRY LEVEL	APPROVED	DISAPPROVED
County Sheriff	Civilian Jailer	CWA: \$19.28/hour		
County Sheriff	Civilian Lieutenant	Wage Plan: \$70,835.00/year		
	*Please see attached memos.			

\_\_\_\_\_  
Chairman, Board of Supervisors



# Woodbury County Sheriff's Office

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LAW ENFORCEMENT CENTER  
P. O. BOX 3715 SIOUX CITY, IOWA 51102

DAVID A. DREW, SHERIFF

PHONE: 712.279.6010  
E-MAIL: [ddrew@woodburycountyiowa.gov](mailto:ddrew@woodburycountyiowa.gov)  
FAX: 712.279.6522

03 October 2018

To the Woodbury County Board of Supervisors & Human Resources Department,

The Woodbury County Sheriff's Office respectfully requests discussion and action on the authorization to begin the hiring process for a female Correctional Officer position, October 10th, 2018. We request this be placed on the agenda for the Tuesday, October 9<sup>th</sup>, 2018, Woodbury County Board of Supervisors meeting. Thank you.

Sincerely,

A handwritten signature in black ink that reads "David Drew". The signature is written in a cursive style with a large initial "D".

Dave Drew, Sheriff

Cc: file





## Woodbury County Sheriff's Office

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LAW ENFORCEMENT CENTER  
P. O. BOX 3715 SIOUX CITY, IOWA 51102

DAVID A. DREW, SHERIFF

PHONE: 712.279.6010  
E-MAIL: [ddrew@woodburycountyiowa.gov](mailto:ddrew@woodburycountyiowa.gov)  
FAX: 712.279.6522

04 Oct 2018

To the Woodbury County Board of Supervisors & Human Resources Department,

The Woodbury County Sheriff's Office respectfully requests discussion and action on the authorization to promote Sgt. Mary Feiler to the rank of Civilian Lieutenant. This promotion will be effective Monday, October 15, 2018. We request this be placed on the agenda for the Tuesday, October 9, 2018, Woodbury County Board of Supervisors meeting. Thank you.

Sincerely,

A handwritten signature in black ink that reads "David Drew".

Dave Drew, Sheriff

Cc: file

**WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM**

Date: 10/03/2018

Weekly Agenda Date: 10/09/2018

**ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN:** Kenny Schmitz/Dan Heissel

**WORDING FOR AGENDA ITEM:**

Dorothy Pecaut Nature Center - HVAC & Roof Improvement Project

**ACTION REQUIRED:**

Approve Ordinance

Approve Resolution

Approve Motion

Public Hearing

Other: Informational

Attachments

**EXECUTIVE SUMMARY:**

CMBA Architects has completed design plans, specifications and form of contract to be utilized in the competitive bid process relating to improvements of the HVAC Systems and Roof Upgrade project for the Dorothy Pecaut Nature Center.

Plans for the HVAC include replacement of existing heat pumps with Variable Refrigerant Flow (VRF) systems connected to a ground coupled heat exchanger. New controls will include remote monitoring and building operating adjustments. Equipment will provide better humidity control and air quality.

The roof portion of the project will replace the existing aged shingles and felt. Improvements to the roof will include an addition of 4" of rigid insulation over existing sheeting. Current insulation "R" Values of R8-R10 will be improved to approximately R-38.

The expected construction project is anticipated to take approximately four months to complete.

**BACKGROUND:**

May 15, 2018, the Woodbury County Board of Supervisors approved CMBA Architects to provide architecture and engineering services to draft design plans & specifications to be utilized in the competitive bid process relating to HVAC mechanical & control systems and roof improvements at the Dorothy Pecaut Nature Center.

May 8, 2018, Woodbury County Building Services Director, Woodbury County Finance Director, Woodbury County Assistant Attorney and the Woodbury County Conservation Director held a meeting to discuss the HVAC upgrade and roof replacement project funding mechanism. After much discussion on Iowa Codes 350.3 and 350.6, it was decided that input would be necessary from the county's external audit firm (Williams & Company).

The Finance Director contacted the audit firm (Jeff Peters) who replied that the funds should be expended from Woodbury County fund 360 (CIP) and that Woodbury County should do the bid letting following Iowa Code 350.3 which provides that the Board of Supervisors shall provide offices for the Conservation Board. If a project does not involve Conservation Board offices, under Code 350.6 bid letting would be conducted by the Conservation Board.

April 24, 2018, the Woodbury County Board of Supervisors approved Woodbury County CIP funds to be utilized toward the Dorothy Pecaut HVAC system and roof upgrades.

**FINANCIAL IMPACT:**

CIP - #9107-16

Projected cost estimate \$722,436

**IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?**

Yes  No

**RECOMMENDATION:**

Woodbury County Building Services & Woodbury County Conservation Departments recommend approval of plans, specifications, form of contract and authorization to seek competitive bids.

**ACTION REQUIRED / PROPOSED MOTION:**

1. Motion to approve plans, specifications and form of contract and to seek competitive bids for the Dorothy Pecaut HVAC Systems and Roof Improvement Project.
2. Motion to set a public hearing at the Board of Supervisors meeting October 23, 2018 at 4:45 p.m., Woodbury County Courthouse Lower level.

# DRAFT AIA® Document A101™ - 2017

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

AGREEMENT made as of the «Sixth » day of «November » in the year «Two-Thousand, Eighteen »

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

«Woodbury County »« »  
«620 Douglas Street »  
«Sioux City, Iowa 51101 »  
«712/279-6525 »

and the Contractor:

(Name, legal status, address and other information)

« »« »  
« »  
« »  
« »

for the following Project:

(Name, location and detailed description)

« Roofing and HVAC Renovation »  
« Dorothy Pecaut Nature Center »  
« 4500 Sioux River Road »  
« Sioux City, Iowa 51109 »

The Architect:

(Name, legal status, address and other information)

« Cannon Moss Brygger & Associates P.C. dba CMBA Architects (CMBA) »« »  
« 302 Jones Street, Suite 200 »  
« Sioux City, Iowa 51101 »  
« 712/274-2933 »

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

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

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

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

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

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- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
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- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

### EXHIBIT A INSURANCE AND BONDS

#### ARTICLE 1 THE CONTRACT DOCUMENTS

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

#### ARTICLE 2 THE WORK OF THIS CONTRACT

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

#### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

«Upon receipt of this signed Agreement. »

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

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

#### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:  
(Check one of the following boxes and complete the necessary information.)

[ « » ] Not later than « » ( « » ) calendar days from the date of commencement of the Work.

[ «X » ] By the following date: «May 31, 2019 »

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

Portion of Work	Substantial Completion Date
Completion of ALL interior work in occupied spaces.	March 29, 2019
Completion of ALL mechanical and electrical work	May 3, 2019

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

#### ARTICLE 4 CONTRACT SUM

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

#### § 4.2 Alternates

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

Item	Price
Not Applicable (N.A.)	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
N.A.		

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

Item	Price
N.A.	

§ 4.4 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
N.A.		

§ 4.5 Liquidated damages, if any:

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

« If any portion of the work is not completed as specified in 3.3.1 and 3.3.2 above, the Owner will incur loss of revenue and liquidated damages of \$250 per calendar day will apply for each portion of the work not complete as so specified until those portions are deemed complete by the Owner and Architect.» »

§ 4.6 Other:

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

«N.A. »

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

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

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the «first » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the «last » day of the «same » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «thirty » ( « 30 » ) days after the Architect receives the Application for Payment.

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

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

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

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

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

«Five Percent (5%) »

§ 5.1.7.1.1 The following items are not subject to retainage:  
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

«N.A. »

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

«N.A. »

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

«It shall not include retainage attributed to the value established for work still remaining to be completed »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

## § 5.2 Final Payment

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

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

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

« »

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.  
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

### § 6.2 Binding Dispute Resolution

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

[  ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[  ] Litigation in a court of competent jurisdiction



[ « » ] Other (Specify)

« »

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

**ARTICLE 7 TERMINATION OR SUSPENSION**

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

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:  
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)*

«N.A. »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

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

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

«Kenny Schmitz, Building Services Director »  
«Woodbury County »  
«401 8<sup>th</sup> Street »  
«Sioux City, Iowa 51101 »  
«712/279-6539 »  
«kschmitz@woodburycountyiowa.gov »

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

« »  
« »  
« »  
« »  
« »  
« »

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

**§ 8.5 Insurance and Bonds**

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in the Specification Section Supplementary Conditions of the Contract – Article 11.

§ 8.5.2 The Contractor shall provide bonds as set forth in the Specification Section Supplementary Instructions to Bidders – Article 7.

**§ 8.7 Other provisions:**

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .3 Drawings  
Dated September 21, 2018  
See Exhibit A – Drawing Index
- .4 Specifications  
Dated September 21, 2018  
See Exhibit B – Specification Table of Contents
- .5 Addenda, if any:

Number	Date	Pages
Xx		
xx		

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

- .6 Other Exhibits:  
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)  
[  ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Supplementary Conditions	Supplementary Conditions of the Contract for Construction	9/21/18	1

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

« »

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

OWNER (Signature)

«Rocky DeWitt  
Board Chairperson »« »

(Printed name and title)

CONTRACTOR (Signature)

« »« »  
(Printed name and title)

# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

Roofing and HVAC Renovation »  
«Dorothy Pecaut Nature Center »  
«4500 Sioux River Road  
Sioux City, Iowa 51109 »

### THE OWNER:

(Name, legal status and address)

«Woodbury County »« »  
«620 Douglas Street »  
«Sioux City, Iowa 51101 »  
«712/279-6525 »

### THE ARCHITECT:

(Name, legal status and address)

«Cannon, Moss, Brygger & Associates P.C. dba CMBA Architects P.C.»  
«302 Jones Street, Suite 200  
Sioux City, Iowa 51101»

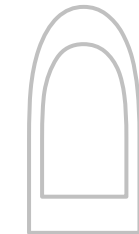
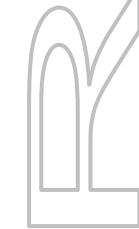
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**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information 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.

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



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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

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

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

#### **§ 1.1.2 The Contract**

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

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

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

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

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

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

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

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

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

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

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

### § 1.3 Capitalization

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

### § 1.4 Interpretation

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

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

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

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

### § 1.6 Notice

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

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

### § 1.7 Digital Data Use and Transmission

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

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or

relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

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

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as

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

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

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

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

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

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

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

### **§ 3.4 Labor and Materials**

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

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

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



### **§ 3.5 Warranty**

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

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

### **§ 3.6 Taxes**

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

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

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

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

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

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

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

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

### § 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 Superintendent

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

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

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

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

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

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

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

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and

similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **§ 3.13 Use of Site**

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

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

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

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

### **§ 3.16 Access to Work**

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

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

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

### § 3.18 Indemnification

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

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

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

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

### § 4.2 Administration of the Contract

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

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

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

### § 4.2.4 Communications

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



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

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

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in

number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

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

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

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

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

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

## § 5.3 Subcontractual Relations

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

## § 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

### § 6.2 Mutual Responsibility

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

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

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

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



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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

### § 7.2 Change Orders

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

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

### § 7.3 Construction Change Directives

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

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

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

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

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

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

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

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

#### § 7.4 Minor Changes in the Work

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

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

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

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

## § 8.2 Progress and Completion

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

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

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

## § 8.3 Delays and Extensions of Time

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

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

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

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

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

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

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

#### § 9.4 Certificates for Payment

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

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

#### § 9.5 Decisions to Withhold Certification

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

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

.7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

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

## § 9.6 Progress Payments

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

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

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

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

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

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

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

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



## § 9.7 Failure of Payment

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

## § 9.8 Substantial Completion

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

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

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

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

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

## § 9.9 Partial Occupancy or Use

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

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

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

## § 9.10 Final Completion and Final Payment

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

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

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

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

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

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;

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

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

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

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

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

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

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

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

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

#### § 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed



by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

#### **§ 10.4 Emergencies**

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

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

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

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

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

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

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## § 11.2 Owner's Insurance

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

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

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

## § 11.3 Waivers of Subrogation

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

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

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

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

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

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

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

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

#### **§ 12.1 Uncovering of Work**

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

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

#### **§ 12.2 Correction of Work**

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

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

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

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

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

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

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

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

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

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

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect

timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

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

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

### § 13.5 Interest

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

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

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

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

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract



Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work

properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 Claims**

#### **§ 15.1.1 Definition**

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

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

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

#### **§ 15.1.3 Notice of Claims**

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

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

#### **§ 15.1.4 Continuing Contract Performance**

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

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

#### **§ 15.1.5 Claims for Additional Cost**

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

#### **§ 15.1.6 Claims for Additional Time**

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

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

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

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

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

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

## **§ 15.2 Initial Decision**

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

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

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

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

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

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

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



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

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

### § 15.3 Mediation

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

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

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

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

### § 15.4 Arbitration

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

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

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

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

### § 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party

provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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



# DRAFT AIA® Document A701™ – 1997

## Instructions to Bidders

### for the following PROJECT:

(Name and location or address)

« Roofing and HVAC Renovation »  
« Dorothy Pecaut Nature Center »  
« 4500 Sioux River Road »  
« Sioux City, Iowa 51109 »

### THE OWNER:

(Name, legal status and address)

« Woodbury County »« »  
« 620 Douglas Street »  
« Sioux City, Iowa 51101 »  
« 712/279-6525 »

### THE ARCHITECT:

(Name, legal status and address)

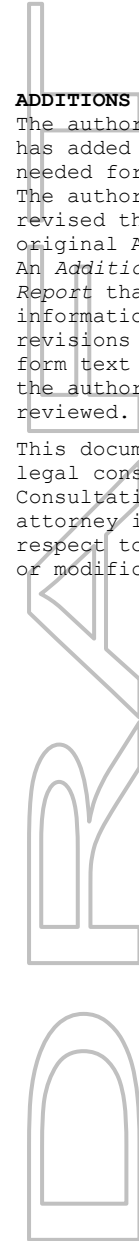
« Cannon, Moss, Brygger & Associates P.C. dba CMBA Architects P.C. »  
« Suite 200 »  
« Sioux City, Iowa 51101 »

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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.



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## ARTICLE 1 DEFINITIONS

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

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

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

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

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

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

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

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

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

## ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 The Bidder by making a Bid represents that:

§ 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.

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

§ 2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.

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

## ARTICLE 3 BIDDING DOCUMENTS

### § 3.1 COPIES

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

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

§ 3.1.3 Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

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

### § 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

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

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

§ 3.2.3 Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

### § 3.3 SUBSTITUTIONS

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

§ 3.3.2 No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

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

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

### § 3.4 ADDENDA

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

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

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

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

## ARTICLE 4 BIDDING PROCEDURES

### § 4.1 PREPARATION OF BIDS

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

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

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

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

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

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

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

## § 4.2 BID SECURITY

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

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

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

## § 4.3 SUBMISSION OF BIDS

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

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

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

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

## § 4.4 MODIFICATION OR WITHDRAWAL OF BID

§ 4.4.1 A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

§ 4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and time-



stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

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

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

## ARTICLE 5 CONSIDERATION OF BIDS

### § 5.1 OPENING OF BIDS

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

### § 5.2 REJECTION OF BIDS

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

### § 5.3 ACCEPTANCE OF BID (AWARD)

§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

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

## ARTICLE 6 POST-BID INFORMATION

### § 6.1 CONTRACTOR'S QUALIFICATION STATEMENT

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

### § 6.2 OWNER'S FINANCIAL CAPABILITY

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

### § 6.3 SUBMITTALS

§ 6.3.1 The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the Owner through the Architect in writing:

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

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

§ 6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or

Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

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

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

### **§ 7.1 BOND REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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



## SECTION 007300 - SUPPLEMENTARY CONDITIONS

### PART 1 GENERAL

#### 1.01 SUMMARY

- A. These Supplementary Conditions amend and supplement the General Conditions defined in Document 007200 - General Conditions and other provisions of the Contract Documents as indicated below. Provisions that are not so amended or supplemented remain in full force and effect.
- B. The terms used in these Supplementary Conditions that are defined in the General Conditions have the meanings assigned to them in the General Conditions.

#### 1.02 MODIFICATIONS TO GENERAL CONDITIONS

- A. Article 11 - Insurance and Bonds:
  - 1. Add Paragraph 11.1.1.1: The minimum policy limits of such insurance shall be as follows:
    - a. Workmen's Compensation: Statutory.
    - b. Employer's Liability: \$1,000,000.
    - c. Comprehensive General Liability:
      - 1) \$1,000,000 - per person.
      - 2) \$1,000,000 - per accident.
      - 3) \$1,000,000 - property damage (Broad Form Endorsement).
      - 4) \$2,000,000 General Aggregate (excluding X, C, and U coverage as applicable).
    - d. Comprehensive Motor Vehicle Liability Insurance:
      - 1) \$1,000,000 - per person.
      - 2) \$1,000,000 - per accident.
      - 3) \$1,000,000 - property damage (Broad Form Endorsement).
      - 4) \$2,000,000 - General Aggregate.
    - e. Umbrella Excess Liability:
      - 1) \$3,000,000 - over primary insurance for Auto, General Liability, and Worker's Compensation.
  - 2. Add Paragraph 11.2.1.1:
    - a. The Owner shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, Property Insurance written on a Builder's Risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site of a replacement cost basis without optional deductibles.
- B. Article 12 - Uncovering and Correction of Work:
  - 1. Add Paragraph 12.1.3:
    - a. Should any uncharted underground obstruction be encountered that would cause a change in location of utility lines or building lines from that shown on the Drawings, the Contractor shall notify the Architect and obtain approval prior to proceeding with the Work. Any resultant change in Contract Price will be processed by Change Order.

### PART 2 PRODUCTS - NOT USED

### PART 3 EXECUTION - NOT USED

**END OF SECTION**

## SECTION 002113 - INSTRUCTIONS TO BIDDERS AND SUPPLEMENTARY INSTRUCTIONS

### SUMMARY

**1.01 SEE AIA A701, INSTRUCTIONS TO BIDDERS BOUND IN THE PROJECT MANUAL.**

**1.02 THE INSTRUCTIONS IN THIS DOCUMENT AMEND OR SUPPLEMENT THE INSTRUCTIONS TO BIDDERS AND OTHER PROVISIONS OF THE BIDDING AND CONTRACT DOCUMENTS.**

### 1.03 DOCUMENT INCLUDES

- A. Invitation
  - 1. Bid Submission
  - 2. Intent
  - 3. Contract Time
- B. Bid Documents and Contract Documents
  - 1. Definitions
  - 2. Contract Documents Identification
  - 3. Availability
  - 4. Examination
  - 5. Inquiries/Addenda
- C. Bid Submission
  - 1. Bid Depository
  - 2. Submission Procedure
- D. Bid Enclosures/Requirements
  - 1. Security Deposit (in a Separate Envelope)
  - 2. Bid Form Requirements
- E. Offer Acceptance/Rejection
  - 1. Duration of Offer
  - 2. Acceptance of Offer

### 1.04 RELATED DOCUMENTS

- A. Document 011000 - Summary.
- B. Document 001113 - Advertisement for Bids.
- C. Document 004100 - Bid Form.
- D. Document 004336 - Proposed Subcontractors Form.
- E. Document 004323 - Alternates Form.
- F. Document 007300 - Supplementary Conditions:

### 1.05 SUPPLEMENTARY INSTRUCTIONS

#### A. ARTICLE 2 - BIDDER'S REPRESENTATIONS

- 1. Add Section 2.1.3.1: The Bidder has investigated all required fees, permits, and regulatory requirements of authorities having jurisdiction and has properly included in the submitted Bid the costs of such fees, permits and requirements not otherwise indicated as provided by the Owner.
- 2. Add Section 2.1.5: The Bidder is a properly licensed Contractor according to the laws and regulations of the State of Iowa and meets qualifications indicated in the Procurement and Contracting Documents.

#### B. ARTICLE 4 - BIDDING PROCEDURES

- 1. Add Section 4.1.1.1: Printable electronic Bid forms and related documents are available from the Architect.
- 2. Add Section 4.1.9: Owner may elect to disqualify a bid due to failure to submit a bid in the form requested, failure to bid requested alternates or unit prices, failure to complete

entries in all blanks in the Bid Form, or inclusion by the Bidder of any Alternates, conditions, limitations or provisions not called for.

3. Add Section 4.1.10: Bids shall **not** include sales and use taxes. The County will obtain a "tax exemption certificate" from the State of Iowa and will furnish it to all Prime Contractors, Sub-Contractors and Suppliers. The tax exemption includes Iowa sales tax and any local option sales tax that may be applicable.
4. Add Section 4.2.4: Bid Security shall be in the form of cash, cashier's check, certified check, Credit Union certified Share Draft or a Bid Bond in an amount of at least five percent (5%) of the Base Bid. Checks shall be made payable to Woodbury County. Bid Bonds must be executed by corporations authorized to contract as surety in Iowa and in addition to all other provisions, clearly designate an Iowa resident agent as attorney-in-fact.
  - a. Bid Security shall be placed in a **separate envelope** from the envelope containing the Bid Form.
5. Add Section 4.5: Provide detailed cost breakdown no later than two (2) days following Architect's request.

**C. ARTICLE 5 - CONSIDERATION OF BIDS**

1. Add Section 5.2.1: The Owner reserves the right to reject a bid based on Owner's and Architect's evaluation of qualification information submitted following the opening of Bids. The evaluation of the Bidder's qualifications will include:
  - a. Status of licensure and record of compliance with licensing requirements.
  - b. Record of quality of completed work.
  - c. Record of project completion and ability to complete Project.
  - d. Record of financial management including financial resources available to complete Project.
  - e. Record of timely payment of obligations.
  - f. Record of project site management including compliance with requirements of authorities having jurisdiction.
  - g. Record of and number of current claims and disputes and the status of their resolution.
  - h. Qualifications of the Bidder's proposed Project Staff and proposed sub-contractors.

**D. ARTICLE 7 - PERFORMANCE BOND AND PAYMENT BOND**

1. Add Section 7.1.1.1: Both a Performance Bond and a Payment Bond will be required, each in an amount equal to one hundred percent (100%) of the Contract Sum.
2. Section 7.2.1: Delete the first sentence and insert the following:
  - a. "The Bidder shall deliver the required bonds to the Owner no later than ten (10) days after the Date of Notice of Intent to Award and no later than the date of execution of the Contract, whichever occurs first. Owner may deem the failure of the Bidder to deliver required bonds within the period of time allowed a default".

**E. ADD ARTICLE 9 - EXECUTION OF THE CONTRACT**

1. Add Section 9.1.1: Unless otherwise indicated in the Procurement and Contracting Documents or the executed Agreement, the date of commencement of the Work shall be the date of the executed Agreement.
2. Add Section 9.1.2: In the event of a default, the Owner may declare the amount of the Bid Security forfeited and elect to either award the Contract to the next lowest responsible Bidder or re-advertise for Bids.

**END OF SECTION**

**WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM**

**#10**

Date: 10/3/2018 Weekly Agenda Date: 10/9/2018

**ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN:** Mark J. Nahra, County Engineer

**WORDING FOR AGENDA ITEM:**

Consider approval of preconstruction agreement with Iowa DOT for I-29 overpass bridge raising projects

**ACTION REQUIRED:**

- Approve Ordinance       Approve Resolution       Approve Motion   
Public Hearing       Other: Informational       Attachments

**EXECUTIVE SUMMARY:**

Iowa DOT is preparing plans for raising two bridges that pass over I-29. A preconstruction agreement is presented for board approval.

**BACKGROUND:**

The Iowa DOT programmed projects for FY 2021 to raise overpass structures at I-29 and 290th Street/Carroll Avenue and 310th Street. The projects are funded by the Iowa DOT. The county is responsible for detouring traffic during construction.

**FINANCIAL IMPACT:**

The County is required to set up detours for traffic during construction. There is a small cost to this work that will be absorbed within the county road department budget. Construction costs are paid by Iowa DOT.

**IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?**

Yes       No

**RECOMMENDATION:**

I recommend that the board approve the preconstruction agreement for two bridge raising projects over I-29 with the Iowa DOT and direct the chair to sign the agreement.

**ACTION REQUIRED / PROPOSED MOTION:**

Motion to approve the preconstruction agreement for two bridge raising projects over I-29 with the Iowa DOT and direct the chair to sign the agreement.

**IOWA DEPARTMENT OF TRANSPORTATION  
Preconstruction Agreement  
For Primary Road Project**

County	<u>Woodbury</u>
Project No.	<u>IMN-029-6(279)130--0E-97 (Grading) IMN-029-6(281)130--0E-97 (ROW) IMN-029-6(280)132--0E-97 (Grading) IMN-029-6(282)132--0E-97 (ROW)</u>
Iowa DOT Agreement No.	<u>2019-C-009</u>
Staff Action No.	<u>N/A</u>

This Agreement, is entered into by and between the Iowa Department of Transportation, hereinafter designated the "DOT", and Woodbury County, Iowa, a Local Public Agency, hereafter designated the "LPA" in accordance with Iowa Code Chapters 28E, 306, 306A and 313.4 as applicable;

The DOT proposes to establish or make improvements to I-29 within Woodbury County, Iowa; and

The DOT and the LPA are willing to jointly participate in said projects, in the manner hereinafter provided; and

This Agreement reflects the current concept of the projects which is subject to modification by mutual agreement between the LPA and the DOT; and

Therefore, it is agreed as follows:

**1. Project Information**

- a. The DOT will design, let, and inspect construction of the following described projects in accordance with the project plans and DOT standard specifications:

IMN-029-6(279)130--0E-97 (Grading)

Grading at County Road D65/310<sup>th</sup> Street over I-29 approximately 2.2 miles north of Iowa 141 in Woodbury County. The project provides for raising the bridge over I-29.

IMN-029-6(280)132--0E-97 (Grading)

Grading at County Road K35/Carroll Avenue over I-29 approximately 4.2 miles north of Iowa 141 in Woodbury County. The project provides for raising the bridge over I-29.

**2. Project Costs**

- a. The DOT will bear all costs except those allocated to the LPA under other terms of this Agreement.

**3. Traffic Control**

- a. I-29 through-traffic will be maintained during the construction.
- b. It will be necessary to close County Road D65/310<sup>th</sup> Street and County Road K35/Carroll Avenue during the construction of the projects. The projects will be scheduled such that only one bridge will be closed at a time.
- c. The DOT will furnish and install the required barricades and signing for the closure at project cost and shall remove same upon completion of the projects also at no expense or obligation to the LPA. The DOT will work in close cooperation with the LPA and the contractor to accommodate emergency services and local access across the project during construction. Any detours which may be necessary for project related LPA road closures will be the responsibility of the LPA all at no expense or obligation to the DOT.

- d. The DOT shall meet with the LPA to determine whether said closure(s) will cause increased traffic on other LPA roads. The DOT and the LPA shall determine a plan, and the costs thereof, for the LPA to perform dust control on said LPA roads with increased traffic, should dust control become necessary. In that event, the LPA shall inform the DOT prior to performing said dust control. The DOT shall reimburse the LPA for the cost of said dust control measures following the receipt of a bill for the agreed upon costs (see Iowa Code section 313.4 subsection 1.b.).

#### **4. Right of Way and Permits**

- a. The DOT will be responsible for the coordination of utility facility adjustments for the primary road projects.
- b. In connection with the projects any real estate and rights to real estate necessary for right of way at the connection of any public road and a primary highway project, any access road or frontage road, or any permanent utility easements which are or which will be under the jurisdiction of the LPA may be acquired by the DOT, for and in the name of the LPA. Where acquired by contract the LPA will receive title from the contract seller and the LPA will accept title thereto. Where acquired by condemnation, a single joint condemnation proceeding will be instituted by the DOT to acquire real estate or rights in real estate needed by the LPA for the LPA and to acquire real estate or rights in real estate needed by the DOT for the DOT.

#### **5. Construction & Maintenance**

- a. Upon completion of the projects, no changes in the physical features thereof will be undertaken or permitted without the prior written approval of the DOT.
- b. Future maintenance of the primary highway within the project area will be carried out in accordance with the terms and conditions contained in Instructional Memorandum 2.110.
- c. If necessary, the DOT will relocate at project cost all existing LPA-owned destination lights, and signs which require adjustment as part of the projects (if any). If the LPA chooses to perform relocation of the LPA-owned lighting and signing, the DOT will reimburse the LPA for said relocations upon receipt of a properly documented billing from the LPA. Any destination lights which require adjustment as part of the projects which are owned by a utility company and rented to the LPA will be relocated by the utility company at no cost to the project.
- d. Structures built by the DOT over or under a primary road will be maintained structurally sound by the DOT, including repairs to floors and railing and painting. For structures serving roadways which are not on the primary road system, the cleaning and removal of snow, debris and foreign objects from local road traffic lanes, sidewalks or walkways within the project limits (if any) including pedestrian overpasses or underpasses will be the responsibility of the LPA.

#### **6. General Provisions**

- a. If the LPA has completed a Flood Insurance Study (FIS) for an area which is affected by the proposed Primary Highway project and the FIS is modified, amended or revised in an area affected by the project after the date of this Agreement, the LPA shall promptly provide notice of the modification, amendment or revision to the DOT. If the LPA does not have a detailed Flood Insurance Study (FIS) for an area which is affected by the proposed Primary Highway project and the LPA does adopt an FIS in an area affected by the project after the date of this Agreement, the LPA shall promptly provide notice of the FIS to the DOT.
- b. The LPA will comply with all provisions of the equal employment opportunity requirements prohibiting discrimination and requiring affirmative action to assure equal employment opportunity as required by Iowa Code Chapter 216. No person will, on the grounds of age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, pregnancy, or disability, be excluded from

participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which State funds are used.

- c. It is the intent of both (all) parties that no third party beneficiaries be created by this Agreement.
- d. If any section, provision, or part of this Agreement shall be found to be invalid or unconstitutional, such finding shall not affect the validity of the Agreement as a whole or any section, provision, or part thereof not found to be invalid or unconstitutional, except to the extent that the original intent of the Agreement cannot be fulfilled.
- e. This Agreement may be executed in (two) counterparts, each of which so executed will be deemed to be an original.
- f. This Agreement, as well as the unaffected provisions of any previous agreement(s), addendum(s), and/or amendment(s); represents the entire Agreement between the LPA and DOT regarding the projects. All previously executed agreements will remain in effect except as amended herein. Any subsequent change or modification to the terms of this Agreement will be in the form of a duly executed amendment to this document.

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**IN WITNESS WHEREOF**, each of the parties hereto has executed Agreement No. 2019-C-009 as of the date shown opposite its signature below.

**BOARD OF SUPERVISORS OF WOODBURY COUNTY:**

By: \_\_\_\_\_ Date \_\_\_\_\_, 20\_\_\_\_.  
Chairperson

**ATTEST:**

By: \_\_\_\_\_  
County Auditor

**IOWA DEPARTMENT OF TRANSPORTATION:**

By: \_\_\_\_\_ Date \_\_\_\_\_, 20\_\_\_\_.  
Tony Lazarowicz  
District Engineer  
District 3



**WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM**

Date: October 3, 2018 Weekly Agenda Date: October 9, 2018

**ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN:** Joshua Widman, County Attorney's Office

**WORDING FOR AGENDA ITEM:**

Approval of Corrective Quitclaim Deed to Woodbury Central Community School District for Real Estate in Sunrise View Addition, Merville, Iowa

**ACTION REQUIRED:**

- |  |   |  |
|--|---|--|
| Approve Ordinance <input type="checkbox"/> | Approve Resolution <input type="checkbox"/>   | Approve Motion <input checked="" type="checkbox"/> |
| Public Hearing <input type="checkbox"/>    | Other: Informational <input type="checkbox"/> | Attachments <input type="checkbox"/>               |

**EXECUTIVE SUMMARY:**

Attorney Chad Thompson is doing a title opinion for a proposed street/subdivision in Merville by the fairgrounds. He has requested a quitclaim deed from the County to correct a potential title concern.

**BACKGROUND:**

Woodbury County and the Fair Association sold the subject property to Woodbury Central in 2003 for \$40,000 after publication and a public hearing. See the attached Board minutes. The 2003 deed at Roll 627, Image 565 did not include a signature line for the Fair Association. The Fair Association has now executed a quitclaim deed. Attorney Thompson requests a similar quitclaim deed from the County.

**FINANCIAL IMPACT:**

None

**IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?**

Yes  No

**RECOMMENDATION:**

Approve the quitclaim deed to correct the potential title issue with the property.

**ACTION REQUIRED / PROPOSED MOTION:**

Motion to authorize Chairman to sign quitclaim deed to Woodbury Central Community School for property described as North Five Feet (N 5') of Lot Two and Lots Ten through Twenty-two (10-22), Block One (I), Sunrise View Addition, City of Merville, Woodbury County, Iowa.



**QUIT CLAIM DEED**  
THE IOWA STATE BAR ASSOCIATION  
Official Form No. 106  
**Recorder's Cover Sheet**

**Preparer Information:** (Name, address and phone number)

Chad Thompson, 4 East 2nd Street, Kingsley, IA 51028, Phone: (712) 378-3611

**Taxpayer Information:** (Name and complete address)

Woodbury Central Community School, 408 S. 4th Street, Merville, IA 51039

**Return Document To:** (Name and complete address)

Chad Thompson, 4 East 2nd Street, Kingsley, IA 51028

**Grantors:**

Woodbury County, Iowa

**Grantees:**

Woodbury Central Community School

**Legal description:** See Page 2

**Document or instrument number of previously recorded documents:**



QUIT CLAIM DEED

For the consideration of \_\_\_\_\_ one and no/100 \_\_\_\_\_ Dollar(s) and other valuable consideration, Woodbury County, Iowa

\_\_\_\_\_ do hereby Quit Claim to Woodbury Central Community School

\_\_\_\_\_ all our right, title, interest, estate, claim and demand in the following described real estate in Woodbury County, Iowa: North Five Feet (N 5') of Lot Two and Lots Ten through Twenty-two (10-22), Block One (1), Sunrise View Addition, City of Merville, Woodbury County, Iowa

This deed is exempt according to Iowa Code 428A.2(6).

This deed is being recorded to correct the Grantor on the deed filed in Roll 627, Image 565.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the real estate. Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated: \_\_\_\_\_

Woodbury County, Iowa

\_\_\_\_\_  
(Grantor)

By: \_\_\_\_\_  
Chairman (Grantor)  
Woodbury County Board of Supervisors

\_\_\_\_\_  
(Grantor)

By: \_\_\_\_\_  
(Grantor)

\_\_\_\_\_  
(Grantor)

\_\_\_\_\_  
(Grantor)

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_  
This record was acknowledged before me on \_\_\_\_\_, by \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

STATE OF IOWA )  
 ) SS:  
COUNTY OF WOODBURY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_ to me personally known, and who, being by me duly sworn, did say that he is the Chairman of the Board of Supervisors of the County of Woodbury, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Supervisors, as contained in Resolution No. \_\_\_\_\_ adopted by the Board of Supervisors, on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, and \_\_\_\_\_ acknowledged the execution of the instrument to be his voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

\_\_\_\_\_  
Notary Public – State of Iowa

# Board Meetings

## 2003-10-14 Board Of Supervisors Meeting

OCTOBER 14, 2003-SIXTEENTH MEETING OF THE WOODBURY COUNTY BOARD OF SUPERVISORS

[Print](#)

The Board of Supervisors met on Tuesday, October 14, 2003 at 9:00 AM. Board members present were Batcheller, Boykin, Clausen, Walish and Welte. Staff members present were Karen James, Board Administrative Coordinator, Diane Swoboda Peterson, Deputy Recorder/Clerk to the Board, and John Sullivan, Board Legal Counsel.

The Claims were approved as presented. Copy filed.

Meeting called to order.

Motion by Boykin second by Batcheller to amend the agenda to include an item recognizing an employee for years of service to the County. Carried 5-0.

Motion by Welte second by Boykin to approve the Board minutes of October 7, 2003 as submitted. Carried 5-0.

Motion by Clausen second by Boykin to approve the Board minutes of the Special Meeting of October 9, 2003 as submitted. Carried 5-0.

Motion by Batcheller second by Clausen to approve the Board minutes of the Executive Session of October 7, 2003 as submitted. Carried 5-0.

The Board approved the separation of John L. Beardshear, Sr., Lead Custodian, Building Services Dept., effective 11-21-03. Retirement. Copy filed.

Motion by Welte second by Batcheller to approve and authorize the Chairman to sign the authorization to initiate hiring process for a Motor Vehicle Clerk II, County Treasurer Dept., AFSCME Cthouse./Grade 4-\$10.77/hour (corrected amount from 10-07-03), and for Case Manager (two new positions) for Social Services Dept., \$29,300/year per position. Carried 5-0. Copy filed.

There was a discussion of social services compensation and caseload increases.

Motion by Boykin second by Batcheller to approve the recommendation to proceed with a change to the wage scale for the social services position retroactive to October 6, 2003. Carried 5-0.

Motion by Boykin second by Batcheller to approve retiring employee, John L. Beardshear, Sr., to remain on county health insurance plan at his own expense. Carried 5-0. Copy filed.

Motion by Batcheller second by Clausen to receive Auditors Quarterly Report for the first quarter ending 9-30-03. Carried

5-0. Copy filed.

The Public Hearing to adopt an integrated solid waste comprehensive plan for Woodbury County Landfill was held at 10:10 a.m. The Chairman called on anyone wishing to be heard on said comprehensive plan.

Motion by Boykin second by Batcheller to close the Public Hearing on the comprehensive plan for Woodbury County as there was no one present wishing to be heard. Carried 5-0.

Motion by Welte second by Boykin to approve and authorize the Chairman to sign Resolution No. 9706 approving and adopting an integrated solid waste comprehensive compliance plan update for the county of Woodbury County. Carried 5-0.

RESOLUTION NO. 2003-9706

with attachments

RESOLUTION APPROVING AND ADOPTING AN INTEGRATED SOLID WASTE COMPREHENSIVE COMPLIANCE PLAN UPDATE FOR THE COUNTY OF WOODBURY COUNTY

WHEREAS, Section 455B.302 of the Code of Iowa requires every city and county of this state to provide for the establishment and operation of a comprehensive solid waste reduction program consistent with the waste management hierarchy under Section 455B.301A, and a sanitary disposal project for final disposal of solid waste by its residents; and

WHEREAS, Section 455B.306(1) of the Code of Iowa requires that all cities and counties file with the Director of the Department of Natural Resources a comprehensive plan detailing the method by which the city or county will comply with the requirements of Section 455B.302 to establish and implement a comprehensive solid waste reduction program for its residents; and

WHEREAS, a comprehensive plan, as described in Section 455B.306 of the Code of Iowa has been prepared at the direction of and in participation with the County of Woodbury County, Iowa, entitled Integrated Solid Waste Comprehensive Compliance Plan Update, by the Department of Natural Resources, and dated October 14, 2003, a copy of which is attached hereto and made a part hereof; and

WHEREAS, the Woodbury County Board of Supervisors has determined that the adoption and implementation of the proposed comprehensive plan is in the best interest of the County with respect to satisfying the County's statutory duties.

NOW, THEREFORE, BE IT RESOLVED BY THE WOODBURY COUNTY BOARD OF SUPERVISORS, that the proposed comprehensive plan is hereby adopted as the comprehensive solid waste reduction plan of Woodbury County, Iowa.

AND BE IT FURTHER RESOLVED that the County shall implement and participate in the programs set forth in the comprehensive plan.

AND BE IT FURTHER RESOLVED that the comprehensive plan shall be submitted to the Iowa Department of Natural Resources, on behalf of Woodbury County in satisfaction of Section 455B.306(1) of the Code of Iowa.

PASSED AND APPROVED: October 14, 2003

Woodbury County Board of Supervisors

Copy filed.

Motion by Welte second by Clausen to authorize the Chairman to sign Farm-to-Market Voucher to reimburse Iowa Department of Transportation for materials inspection on Projects FM-CO97(47)55-97, FM-CO97(48)55-97, and STP-S-CO97(49)5E-97 in the total amount of \$7,390.29 to be paid from the Farm-to-Market fund, per recommendation of the county engineer. Carried 5-0. Copy filed.

Bid letting was held at 10:20 a.m. for Project L-EWP 03(1)73-97, a stream stabilization project on a branch of Wolf Creek.

Bids were as follows:

Name Amount

Weavers Inc., Tipton, IA \$121,058.57

L.A. Carlson, Merrill, IA \$ 83,802.57

Nelson & Rock Contracting, Onawa, IA \$ 85,393.90

K&L Landscape, Sergeant Bluff, IA \$154,760.80

Western Contracting, Sioux City, IA \$ 95,584.60

Joy Dirt Construction, Cushing, IA \$176,432.36

There were no further bids.

Motion by Batcheller second by Boykin to receive the bids for Project L-EWP 03(1)73-97 and submit to the county engineer for review and recommendation. Carried 5-0. Copy filed.

Motion by Boykin second by Batcheller to approve and receive for signatures a resolution recognizing Vincent T. McDonald for his years of service to the County. Carried 5-0.

WOODBURY COUNTY, IOWA

RESOLUTION NO. 9707

A RESOLUTION THANKING AND COMMENDING

Vincent T. McDonald



FOR His SERVICE TO WOODBURY COUNTY

WHEREAS, Vincent T. McDonald has capably served Woodbury County as an employee of the Woodbury County Secondary Roads Department for 36 years, from January of 1967 to December 2003; and

WHEREAS, the service given by Vincent T. McDonald as a Woodbury County employee, has been characterized by his dedication to the best interests of the citizens of Woodbury County; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF WOODBURY COUNTY, IOWA that the undersigned members of this Board thank and commend Vincent T. McDonald for his thirty six years of service to Woodbury County; and

BE IT FURTHER RESOLVED that it is the wish of all those signing below that the future hold only the best for this very deserving person, Vincent T. McDonald; and

BE IT SO RESOLVED this 14th of October, 2003.

WOODBURY COUNTY BOARD OF SUPERVISORS

Copy filed.

Mr. Batcheller excused himself at 10:25 a.m.

The Public Hearing and Sale of Real Estate Parcel #621285, Parcel #621300, and Parcel #621315 to Woodbury Central Community Schools was held at 10:30 a.m. The Chairman called on anyone wishing to be heard on said sale.

Motion by Boykin second by Clausen to close the Public Hearing on the sale of Real Estate Parcel #621285, Parcel #621300, and Parcel #621315 to Woodbury Central Community Schools as there was no one present wishing to be heard on said sale. Carried 4-0.

Chairman called for bids on Real Estate Parcel #621285, Parcel #621300, and Parcel #621315. Woodbury Central Community Schools bid \$40,000 plus recording fees. There were no further bids.

Motion by Clausen second by Welte to accept the offer of \$40,000.00 plus recording fees from Woodbury Central Community Schools for Real Estate Parcel #621285, Parcel #621300, and Parcel #621315. Carried 4-0.

Resolution No. 9708

RESOLUTION

At a meeting held on the 14th day of October, 2003, the following Resolution was presented to the Board of Supervisors of Woodbury County, Iowa:

WHEREAS, by Resolution duly adopted this Board of Supervisors did on the 14th day of October, 2003, propose to sell

to the Woodbury Central Community School for the sum of Forty Thousand and no/100 Dollars (\$40,000.00) the following described property, to-wit:

Parcels # 621285, # 621300, # 621315, described as:

North Five Feet (N 5) Lot Two (2), Block One (1) and Lots Ten Twenty-Two (10-22), Block One (1), Sunrise View Addition, City of Merville, Woodbury County, Iowa.

WHEREAS, pursuant to said Resolution, notice of said proposal has been published in the Sioux City Journal, a weekly newspaper for over two years last past in the City of Sioux City, Iowa, said notice having been published on the 7th day of October, 2003, and which Resolution and Notice fixed the 14th day of October, 2003, at 10:30 a.m. at the Woodbury County Board of Supervisors, Sioux City, Iowa, as the time and place of final action on said Resolution, and

WHEREAS, the time so originally fixed for final action has arrived and passed and no objections have been made to the proposal, the Woodbury County Board of Supervisors having fully considered the same and it appearing to the Woodbury County Board of Supervisors that the proposed sale should be made.

IT IS THEREFORE HEREBY RESOLVED, by the Woodbury County Board of Supervisors that certain real property above described be and the same is hereby sold to the Woodbury Central Community School, Merville, Iowa, for the sum of Forty Thousand and no/100 Dollars (\$40,000.00) and it is further resolved that the Board President and the Board Secretary be and they are hereby authorized to execute a Quit Claim Deed on behalf of Woodbury County conveying said real property and that said deed when so executed shall be presented to the Board of Supervisors for approval.

Passed and approved by the Board of Supervisors for Woodbury County, Iowa, this 14th day of October, 2003.

WOODBURY COUNTY BOARD OF SUPERVISORS

Copy filed.

There was a discussion of the sale proceeds.

Motion by Boykin second by Welte to approve letting the Woodbury County Fair keep the proceeds from the preceding sale of real estate property in the amount of \$40,000.00 and not budget any funding for the Fair for FY 05, with beyond funding non-existent due to Re-Inventing Government Legislation. Carried 4-0. Copy filed.

The Board discussed with Patty Erickson-Puttmann a request from the Courts for second floor signage.

The Board discussed proposed changes to the General Relief Policy manual with Attorney John Sullivan, LaRae Lyons, and Jean Logan.

Motion by Boykin second by Welte to approve proposed changes to the General Relief Policy Manual. Carried 4-0. Copy filed.

Motion by Boykin second by Clausen to approve Project Safe Neighborhoods Grant, Grant No. 03-ND03. Carried 4-0.

Copy filed.

The Chairman asked if there were any individual or group wishing to make a presentation of items not on the agenda or Supervisors concerns.

Motion by Welte second by Boykin to allow a fireworks display at Theos Steakhouse on October 25, 2003. Carried 4-0.

Motion by Boykin second by Clausen to go into Executive Session per Iowa Code Section 21.5(1)(c). Carried 4-0 on a roll call vote.

Motion by Clausen second by Boykin to go out of Executive Session. Carried 4-0 on a roll call vote.

Motion by Boykin second by Welte to approve the recommendation of the attorney in the Executive Session. Carried 4-0.

The Board adjourned the regular meeting until October 21, 2003.

THE IOWA STATE BAR ASSOCIATION  
Official Form No. 108

ISBA # 3752

FOR THE LEGAL EFFECT OF THE USE OF  
THIS FORM, CONSULT YOUR LAWYER

Doc. No. 13655  
WOODBURY COUNTY, IOWA  
Filed for record, indexed and delivered  
to County Auditor & Recorder on

WOODBURY COUNTY, IOWA  
Entered upon the transfer book and  
for taxation on

DEC 22 2003

DEC 22 2003

Time 8:01 AM PM 2:00  
Auditor's & Recorder's Fee \$ 2.00 Pd.  
PATRICK F. GILL, Auditor & Recorder  
By [Signature] Designee

Fees 5.00 Pd.  
PATRICK F. GILL, Auditor & Recorder  
By [Signature] Designee

Preparer Information: Thomas R. Mohrhauser P.O. Box 227; Mapleton, IA 51034 712-882-1468  
Individual's Name Street Address City Phone



Address Tax Statement: Woodbury Central Community School **SPACE ABOVE THIS LINE FOR RECORDER**  
408 So. 4th Street  
Menville, IA 51039

**QUIT CLAIM DEED**

For the consideration of One and no/100-----  
Dollar(s) and other valuable consideration,  
WOODBURY COUNTY, IOWA, obo WOODBURY COUNTY FAIR ASSOCIATION,

do hereby Quit Claim to  
WOODBURY CENTRAL COMMUNITY SCHOOL

all our right, title, interest, estate, claim and demand in the following described real estate in  
Woodbury County, Iowa:

North Five Feet (N 5') Lot Two (2), Block One (1) and Lots Ten through  
Twenty-Two (10-22), Block One (1), Sunrise View Addition, City of Menville,  
Woodbury County, Iowa.

NO TRANSFER TAX - NO DECLARATION OF VALUE: EXEMPT.

Exempt from Declaration of  
Value as per Chpt. 428A.2 (c)

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in  
and to the real estate.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or  
plural number, and as masculine or feminine gender, according to the context.

Dated: November 25, 2003 WOODBURY COUNTY, IOWA, obo  
WOODBURY COUNTY FAIR ASSOCIATION  
(Grantor)

STATE OF \_\_\_\_\_, ss:  
\_\_\_\_\_ COUNTY,  
On this \_\_\_\_\_ day of \_\_\_\_\_,  
before me, the undersigned, a Notary  
Public in and for said State, personally appeared  
[Signature] President (Grantor)  
[Signature] Secretary (Grantor)  
Woodbury County Board of Supervisors  
(Grantor)

to me known to be the identical persons named in  
and who executed the foregoing instrument and  
acknowledged that they executed the same as their  
voluntary act and deed.

\_\_\_\_\_  
Notary Public  
(This form of acknowledgment for individual grantor(s) only)  
(Grantor)

STATE OF IOWA )  
 ) ss:  
WOODBURY COUNTY )

On this 25<sup>th</sup> day of November, 2003, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Douglas C. Walsh and Patrick F. Gill, to me personally known, and who, being by me duly sworn, did say that they are the President and Secretary of the Board of Supervisors, respectively, of the County of Woodbury, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Supervisors, as contained in Resolution No. 9708 adopted by the Board of Supervisors, on the 14th day of October, 2003, and Douglas C. Walsh and Patrick F. Gill acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

*Karen James*  
NOTARY PUBLIC - STATE OF IOWA



*Pat Walsh  
Nov 25 2003  
Moulton IA 51022*



# Woodbury County Sheriff's Office

DAVID A. DREW, SHERIFF

**WOODBURY COUNTY JAIL WEEKLY POPULATION REPORT AT 0600 HRS.**

**LEC 24 HOUR DAILY COUNT**

DATE	DAILY TOTAL	LEC	ELECTRONIC MONITORING	JUVENILE	FEDERAL PRISONERS	RELEASED
9/1/18	173	162	11	0	12	24
9/2/18	179	168	11	0	12	13
9/3/18	176	165	11	0	12	16
9/4/18	176	165	11	0	11	13
9/5/18	177	166	11	0	11	9
9/6/18	176	164	12	0	11	23
9/7/18	173	161	12	0	11	16
9/8/18	180	167	13	0	13	15
9/9/18	186	173	13	0	13	8
9/10/18	187	174	13	0	13	15
9/11/18	189	179	10	0	13	18
9/12/18	198	187	11	0	13	15
9/13/18	191	180	11	0	13	20
9/14/18	186	174	12	0	13	19
9/15/18	194	180	14	0	16	13
9/16/18	199	185	14	0	16	12
9/17/18	194	180	14	0	16	9
9/18/18	194	178	16	0	16	23
9/19/18	188	172	16	0	11	17
9/20/18	181	164	17	0	9	23
9/21/18	186	169	17	0	9	14
9/22/18	185	169	16	0	11	29
9/23/18	184	168	16	0	11	11
9/24/18	185	169	16	0	11	13
9/25/18	187	173	14	0	11	16
9/26/18	187	172	15	0	11	17
9/27/18	182	164	18	0	11	24
9/28/18	183	168	15	0	11	14
9/29/18	194	179	15	0	11	17
9/30/18	189	174	15	0	11	14
	0					

TOTAL	MALE	FEMALE
186	152	34
181	150	31
181	152	29
178	148	30
175	144	31
187	153	34
177	145	32
182	149	33
181	152	29
189	155	34
197	156	41
202	164	38
200	164	36
193	162	31
193	161	32
197	164	33
189	156	33
201	168	33
189	158	31
187	157	30
183	160	23
198	160	38
179	148	31
182	149	33
189	155	34
189	156	33
188	158	30
182	150	32
196	161	35
188	154	34
0		

**5559      5149      410      0      363      490**

**5639      4661      978**

\*Highest population count each day

LEC TOTAL AVG:	<b>187.3</b>
TOTAL INMATE AVG:	<b>201.6</b>



# Woodbury County Secondary Roads Department

759 E. Frontage Road • Merville, Iowa 51039  
Telephone (712) 279-6484 • (712) 873-3215 • Fax (712) 873-3235

COUNTY ENGINEER

Mark J. Nahra, P.E.

mnahra@woodburycountyiowa.gov

ASSISTANT TO THE COUNTY ENGINEER

Benjamin T. Kusler, E.I.T.

bkusler@woodburycountyiowa.gov

SECRETARY

Tish Brice

tbrice@woodburycountyiowa.gov

To: Board Members

From: Mark Nahra, County Engineer

Date: October 1, 2018

RE: Weekly Work Report

## **Construction Project Report**

### **To be let:**

**BROS-CO97(133)—55-97**, Hancock Avenue Bridge replacement. Letting date: October 16, 2018 (IDOT Letting) Late start date: June 17, 2019. Working days: 85. This project replaced an aging truss bridge on Hancock Avenue near the 200<sup>th</sup> Street intersection. The current bridge is posted 3 tons.

The letting and project schedule allows winter work to may allow the bridge project to be completed earlier in 2019.

**L-B(U51)—73-97**, 320<sup>th</sup> Street Bridge replacement. Letting date: October 30, 2018. Late start date: April 15, 2019. This bridge has been closed since 2014 due to a failed substructure piling. Corps of Engineers and Iowa DNR permits for the project have been acquired.

The project will allow winter work at the contractor's option.

### **Under Contract:**

**STP-S-CO97(134)—55-97**, D50 PCC Resurfacing near Oto. Letting date: April 17, 2018. Late start date: July 23, 2018. Working days: 60. Contractor: Cedar Valley Corporation, Waterloo, IA. Contract price: \$2,354,844.71.

Project work starts at the intersection of D50 and Iowa Hwy 31 in Oto and runs to the intersection of County Routes D50 and L27. Patching has been completed and milling of the existing HMA surface is underway this week. Paving is expected to start in the next two to three weeks. We anticipate a mid-November completion of the project.

**BROS-CO97(132)—55-97**, 150<sup>th</sup> Street Bridge replacement near Lawton. Letting date: June 19, 2018 (IDOT Letting). Late start date: May 1, 2019. Working days: 105. Contractor: Dixon Construction, Correctionville, IA. Contract price: \$1,019,550.42. This project replaced an aging truss bridge on 150<sup>th</sup> Street (Old Highway 20) north of Lawton. The current bridge is posted 3 tons.

No project start date has been announced yet by the contractor. The letting and project schedule allows winter work to may allow the bridge project to be completed earlier in 2019.



**L-B(J9)—73-97**, County Bridge J9 is on 170<sup>th</sup> Street between Jasper and Jewell Avenues. Letting date: August 21, 2018. Late start date: April 15, 2019. Contractor: Dixon Construction, Correctionville, IA. Contract price: \$544,821.40. This bridge was one of the flood damaged structures from the June 18, 2016 storm event. The bridge has been closed to traffic since it was damaged in the flood.

The bridge is being replaced with a single span precast concrete beam bridge. The board approved the contract on September 11, 2018. No start date has yet been announced by the contractor.

**L-B(B82)—73-97**, County Bridge B82 is on 140<sup>th</sup> Street between Kossuth and Lee Avenues. Letting date: May 22, 2018. Contractor: Dixon Construction, Correctionville, IA. Contract price: \$220,270.00. This bridge was one of the flood damaged structures from the June 18, 2016 storm event.

The bridge is being replaced with a reinforced concrete box culvert. Work has been completed on the box culvert and the road is nearly rebuilt. Road surfacing and erosion control work remain. We expect it to open fully to traffic by the October 4, 2018.

**L-(280<sup>th</sup>)—73-97**, Grading and Intersection relocation project. Letting date: September 19, 2017. Late Start Date: October 16, 2017. Contractor: Flewelling Earthmoving, Inc. Contract Price: \$63,743.90. The old intersection of Old Highway 141 and 280<sup>th</sup> Street eastbound had restricted sight distance to the north at the intersection and has been the subject of complaints of near collisions by area landowners and residents. Property owners in the area have donated land to allow relocation of the intersection to a point across from the western leg of 280<sup>th</sup> Street at a location with better sight distance.

Work on this project is complete and the road is open to traffic.

**L-B(V84-2)—73-97**, Lee Avenue Bridge in section 13 of Little Sioux Township. Letting date: February 20, 2018. Late Start Date: April 16, 2018. Contractor: Dixon Construction, Correctionville, IA. Contract price: \$175,677.40. The bridge replacement is a locally funded project with the \$1.3 million special project levy. The project is scheduled to be completed in the 2018 construction season. The current structure was ordered closed in October 2017 due to the failure of substructure components. The new bridge is a precast concrete structure which lends itself to winter construction. The precast sections cost \$45,978.24.

The bridge replacement project started on May 7, 2018. The project is complete and the road was reopened to traffic on July 13, 2018.

**L-B(L-77)—73-97**, 200<sup>th</sup> Street Bridge in section 25 of Rock Township. Letting date: January 23, 2018. Late Start Date: April 1, 2018. Contractor: Dixon Construction, Correctionville, IA. Contract price: \$222,321.80. The bridge replacement project is locally funded project with the \$1.3 million special project levy. The current bridge is narrow and load restricted to less than legal truck loads.

The project is complete and the road is open to traffic.

**L-B(L-78)—73-97**, 200<sup>th</sup> Street Bridge in section 25 of Rock Township. Letting date: January 23, 2018. Late Start Date: April 1, 2018. Contractor: Dixon Construction, Correctionville, IA. Contract price: \$225,543.58. The bridge replacement project is locally funded project with the \$1.3 million special project levy. The current short span bridge will be replaced with a concrete box culvert. The current bridge is posted for a 3-ton maximum load.

The project is complete and the road is open to traffic.

**L-B(Q10)—73-97**, Replacement of Bridge Q10 on 220<sup>th</sup> Street SE of Bronson— Letting date: August 22, 2017. Contractor: Graves Construction, Denison, IA. Contract price: \$287,089.09. This project will replace an aging greenwood structure on 220<sup>th</sup> street west of Bronson with a new reinforced

concrete box culvert with a flumed outlet. This project is funded with the \$1.3 million special project levy funds. The contract has been approved by the Board at their September 29<sup>th</sup> meeting.

The project was worked on throughout the winter. The project is complete and the road is open to traffic.

### **Work Under Design:**

Design work is underway on the following projects for letting sometime during 2018 and 2019.

250<sup>th</sup> Street Grading Project - 2.25-mile grade for paving project south of Anthon. Right of way will be necessary to allow construction of this road. Final design is complete. Plats for right of way acquisition are complete and acquisition has started. We are working toward a winter 2018 letting. This project is funded with the \$1.3 million per year special project levy funds.

Bridge D156 – This structure is on Franklin Avenue north of Old Highway 20/150<sup>th</sup> Street. The structure is posted 8 tons. The existing structure is significantly oversized and built from salvaged materials. The replacement structure is proposed to be a large culvert. This project is funded with money received in the local budget from the new \$0.10 state fuel tax. The project is scheduled for late 2018-early 2019 construction.

Haskell Avenue Bridge C-160 - Design work and permitting are complete on the Haskell Avenue Bridge. The new bridge will be a single span 100' x 30.5' pretensioned, prestressed concrete beam bridge. Final plans are being prepared for a December 2018 or January 2019 letting.

Council on Sexual Assault and  
Domestic Violence, Inc.  
P.O. Box 1565  
Sioux City, IA 51102

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Jeremy Taylor  
Woodbury County Board Of Supervisors  
620 Douglas St Rm 104  
Sioux City IA 51101-1248



# The Council on Sexual Assault & Domestic Violence 33rd Annual Poinsettia Fundraiser

Let your holidays **SPARKLE** , **SHINE** & **RING**

We have beautiful **POINSETTIAS**,  
**CANDY/NUT TRAYS** and **“BINGS”**



Thank you for waiting patiently all year.

We are pleased to announce Poinsettias, Candies/Nuts & Bings!!

**NOTE—THIS COULD POSSIBLY BE OUR LAST YEAR FOR THIS FUNDRAISER!**



**ORDER TODAY TO ENSURE YOUR COLOR AND SIZE PREFERENCE SUPPLY IS LIMITED**



This is the **33rd** year the Council on Sexual Assault and Domestic Violence has provided locally grown florist quality poinsettias to the Siouxland Community. This is the **8th** year that we have "mixed" things up a bit and added the option to order a delicious candy/nut tray or a box of Bings, both of which are made right here in Siouxland by Palmer Candy Co. and can be shipped to loved ones far away. Of course we still have beautiful poinsettias, but be sure to order soon, as color and sizes are limited.



**NOTE—THIS COULD POSSIBLY BE THE LAST YEAR FOR THIS FUNDRAISER!**



Enjoy candies/nuts from Palmer Candy Company. This tray includes:  
**Pecan Caramel Patties & Deluxe Snack Mix with Red, White & Green Chocolate Gems & Peanut Brittle**



Festively decorate your home, office or church.  
 Poinsettias come in **Burgundy, Red, Pink & White**  
 Sizes available: 6", 8", 10"



**RING** in your Holidays with a big box of "Bings"! This 36 ct. box of "Bing" candy bars is made in Sioux City by Palmer Candy Company.

Thank you!

Send completed form with check or credit card information to:

**CSADV**  
 PO Box 1565  
 Sioux City, IA 51102

Phone: 712-277-0131 Fax: 712-226-2035

Additional order forms available on our website: [www.csadvsiouxland.org](http://www.csadvsiouxland.org)

**\*\*ON 11/24-PICK UP @ MERCY FROM 10 A.M.—NOON IS ALL THAT IS OFFERED ON THIS PARTICULAR DATE!**

Regular Delivery Dates: 11/28, 12/1, 12/5, 12/8, 12/12, 12/15

**Business deliveries will be made on Weds. only**

Delivery times: 9am-1pm/Pick up is from 10:00a.m.-12:00 p.m.

Yes—I want my items **delivered:**                     (circle date above)

I will **Pick up** at: (check below) On: (circle date above)

Christy Smith Family Resource Center **(Wed. only)**

Mercy Hospital (By the Gift Shop)

**\*\*Deliveries are only to the local Siouxland area, but plants & candy can be picked up at Mercy (Wed. & Sat.) or th Christy Smith Family Resource Center (Wed. ONLY) on the designated dates and times above.**

Ordered By

Name \_\_\_\_\_

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

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

	\$20	\$30	\$40	\$20	\$30	\$40	\$20	\$30	\$40	\$20	\$30	\$40
	<b>6" Burgundy</b>	<b>8" Burgundy</b>	<b>10" Burgundy</b>	<b>6" Red</b>	<b>8" Red</b>	<b>10" Red</b>	<b>6" White</b>	<b>8" White</b>	<b>10" White</b>	<b>6" Pink</b>	<b>8" Pink</b>	<b>10" Pink</b>

Candy/ Nut Tray \$20	Bing Box \$30	Recipient Address and phone number	Delivery/ pick up date	Mail Candy optional
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Recipient Name:														
Recipient Name:														
Recipient Name:														

Payment Information

Credit Card Information:  Visa  American Express  Mastercard Expiration date: \_\_\_\_\_

Credit Card #: \_\_\_\_\_ 3 digit code on back \_\_\_\_\_

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

\$10 per candy tray mailed	\$ _____
<b>Grand Total</b>	<b>\$ _____</b>

Return Order Form to: CSADV, PO Box 1565, Sioux City, IA 51102

