

**FINANCE COMMITTEE – Cancelled**

**December 1, 2020**

**2:30 p.m.**

**WORK SESSION**

**December 1, 2020**

**Pre-Meeting Work Session – Cancelled**

**AGENDA**

**CITY OF MORRISTOWN, TENNESSEE**

**CITY COUNCIL MEETING**

**December 1, 2020**

**5:00 p.m.**

**1. CALL TO ORDER**

Mayor Gary Chesney

**2. INVOCATION**

**3. PLEDGE OF ALLEGIANCE**

**4. ROLL CALL**

**5. APPROVAL OF MINUTES**

1. November 17, 2020

**6. PROCLAMATIONS/PRESENTATIONS**

1. Voice of the People Award for Transformation in Recreation and Wellness.
2. Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting for fiscal year ended June 30, 2019.

**7. CITIZEN COMMENTS ABOUT AGENDA ITEMS ONLY  
(Other than items scheduled for public hearing.)**

**8. OLD BUSINESS**

**8-a. Public Hearings & Adoption of Ordinances/Resolutions**

1. Public Hearing on the adoption of a Plan of Services for:
  - a. Resolution 15-21  
Being a Resolution of the City Council of the City of Morristown, Tennessee adopting a Plan of Services for the Annexation of Properties Located off of Brady Drive, known as Lot 3, Phase 2 of the Alpha Heights Subdivision (185 Brady Drive).

2. Ordinance No. 3663  
Entitled an Ordinance to Annex Certain Territory and to Incorporate Same within the Corporate Boundaries of the City of Morristown, Tennessee. Lot 3 of Alpha Heights Subdivision, Phase 2, currently addressed as 185 Brady Drive, having Hamblen County Tax Parcel ID # 048H A 00700 000.
3. Ordinance No. 3664  
An Ordinance of the City Council of Morristown, Tennessee amending Title 10 (Animal Control), of the Morristown Municipal Code (restrictions on keeping domesticated hens in residential areas).
4. Ordinance No. 3651.01  
An Ordinance to Amend Ordinance 3651, the City of Morristown, Tennessee Annual Budget for Fiscal Year 2020-2021 and to appropriate additional funds totaling \$183,768; necessary for the Department of Justice Coronavirus Emergency Supplemental Funding Program for the Police Department, the U.S. Department of Transportation pass through funding for Hazardous Materials Emergency Planning Grant for the Fire Department, the Tennessee Cares Act Grant and the Airport Taxiway Connector contract.
5. Ordinance No. 3651.02  
To Amend Ordinance Number 3651 the City of Morristown, Tennessee Annual Budget for Fiscal Year 2020-2021 and to appropriate additional funds totaling \$125,000, and reappropriate funds totaling \$209,355; necessary for the Police Department to purchase vehicles according to their Replacement Plan, and to appropriate an additional \$9,800 in the Drug Fund to replace a Criminal Apprehension Unit vehicle that is no longer in service.

9. **NEW BUSINESS**

9-a. **Resolutions**

1. Resolution No. 16-21  
A Resolution of the City Council of the City of Morristown, Tennessee calling for a Municipal Election on May 4, 2021, for the election of one Councilmember to represent Ward 1; one Councilmember to represent Ward 3; and one at-large Councilmember.

9-b. **Introduction and First Reading of Ordinances**

9-c. **Awarding of Bids/Contracts**

1. Approval of Recommendation to Accept the Best and Lowest Bid for the Construction of the Community Center from PATH Construction including the acceptance of all alternatives for a total contract in the amount of \$27,927,000.

2. Approval of Contract with PATH Construction in the amount of \$27,927,000 for the Construction of the Community Center.
3. Approval of Contract with GEOServices for Testing Services during the Construction of the Morristown Community Center in the amount of \$25,000.
4. Approval of Contract with Lose Design for Contract Administration during the Construction of the Morristown Community Center in an amount not to exceed \$350,000.
5. Approval of Contract with Lose Design for Contract Administration for the ADA work in various city parks in the amount of \$9,750.
6. Approval of Contract with Lose Design for design of signage and trail in Fulton-Hill Park in a lump sum contract amount of \$12,500.
7. Approval of Contract with Design Innovation Architects to address City Center Interior Maintenance Renovations in an amount not to exceed \$19,500.
8. Approval of Contact with Lexipol for on-line police training with PoliceOne Academy for the Morristown Police Department in an amount of \$8,432.
9. Approval of Demolition Bids for dilapidated properties for a total amount of \$21,975.
10. Approval for the City of Morristown and Public Works Department to declare inventory items as surplus and sell via online auction website, GovDeals, or dispose of properly.
11. Approval to Apply for the Assistant Firefighters Grant for the purchase of Self-Contained Breathing Apparatus (SCBA) in the amount of \$290,900 with a 10% match.
12. Approval to accept the best and lowest bid to Rebel Services for the replacement of the self-service fueling terminal at the Morristown Regional Airport in the amount of \$20,500.

**9-d. Board/Commission Appointments**

**9-e. New Issues**

**10. CITY ADMINISTRATOR'S REPORT**

**11. COMMUNICATIONS/PETITIONS**

**This is the portion of the meeting where members of the audience may speak subject to the guidelines provided.**

## 12. COMMENTS FROM MAYOR/COUNCILMEMBERS/COMMITTEES

## 13. ADJOURN

### City Council Meeting/Holiday Schedule:

December 1, 2020	Tuesday	2:30 p.m.	Finance Committee Meeting
December 1, 2020	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
December 1, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
December 8, 2020	Tuesday	1:00 p.m.	City Council Work Session – Public Works Facility Training Room
December 15, 2020	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
December 15, 2020	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
December 24-25, 2020	Thurs/Fri		City Center Closed – Christmas Eve/Christmas Holiday
January 1, 2021	Friday		City Center Closed – New Year’s Holiday
January 5, 2021	Tuesday	2:30 p.m.	Finance Committee Meeting
January 5, 2021	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
January 5, 2021	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
January 18, 2021	Monday		City Center Closed - Martin Luther King Day
January 19, 2021	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
January 19, 2021	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
February 2, 2021	Tuesday	2:30 p.m.	Finance Committee Meeting
February 2, 2021	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
February 2, 2021	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session
February 16, 2021	Tuesday	4:00 p.m.	Work Session – Council Agenda Review
February 16, 2021	Tuesday	5:00 p.m.	Regular City Council Meeting with Work Session

### **WORK SESSION Post-Meeting Work Session December 1, 2020**

#### 1. No Work Session Scheduled



Government Finance Officers Association

Certificate of  
Achievement  
for Excellence  
in Financial  
Reporting

Presented to

**City of Morristown  
Tennessee**

For its Comprehensive Annual  
Financial Report  
For the Fiscal Year Ended

June 30, 2019

*Christopher P. Morill*

Executive Director/CEO

**STATE OF TENNESSEE  
COUNTY OF HAMBLEN  
CORPORATION OF MORRISTOWN  
November 17, 2020**

The City Council for the City of Morristown, Hamblen County, Tennessee, met in regular session at the regular meeting place of the Council in the Morristown City Center at 5:00 p.m., Tuesday, November 17, 2020, with the Honorable Mayor Gary Chesney presiding and the following Councilmembers present: Al A'Hearn, Bob Garrett, Tommy Pedigo, Kay Senter and Ken Smith. Councilmember Absent: Chris Bivens.

Councilmember A'Hearn led in the invocation and "Pledge of Allegiance".

Councilmember A'Hearn made a motion to approve the November 3, 2020 minutes as circulated. Councilmember Senter seconded the motion and upon roll call; all voted "aye".

Mayor Chesney opened the floor for citizens comments related to Agenda items: Reverend John Jones spoke.

Councilmember Pedigo made a motion to bring back from the table consideration of Resolution No. 11-21 Plan of Services for the purpose of discussion. Councilmember A'Hearn seconded the motion and upon roll call; all voted "aye". City Administrator Anthony Cox provided an update and discussion ensued. A Public Hearing and consideration of Resolution No. 11-21 Plan of Services and final passage of Ordinance No. 3661 will be held December 15, 2020 provided proper advertising notice can be met.

**Resolution No. 11-21**

**Being a Resolution of the City of Morristown, Tennessee adopting a Plan of Services for the annexation of properties located along the east side of Morelock Road in Morristown, Tennessee.**

**Ordinance No. 3661**

**Entitled an Ordinance to Annex Certain Territory and to Incorporate same within the Corporate Boundaries of the City of Morristown, Tennessee, Hamblen County Tax Parcel ID# 025 160.00, property located east of Morelock Road and north of John Hay Elementary School.**

The required annual Public Hearing was held pertaining to Public Chapter 1101 regarding Plan of Services and Progress Report for the following annexation ordinance; no one spoke

**Ordinance No. 3649 – Annexation of properties at the southeast intersection of West Andrew Johnson Highway and Talbott Kansas Road (Greene Property). Adopted June 2, 2019.**

A Public Hearing was held relating to Ordinance No. 3662; no one spoke

Councilmember A'Hearn made a motion to approve Ordinance No. 3662 on second and final reading. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

**Ordinance No. 3662**

**Entitled an Ordinance to Close and Vacate Certain Rights-of-Way within the City of Morristown {Undeveloped Alley between Lennie Avenue and Sunrise Avenue and S. Jackson Street and Baird Avenue}.**

Councilmember Pedigo made a motion to approve Resolution No. 14-21. Mayor Chesney presented Resolution 14-21 and asked that the record reflect he is in full support of including “at Morristown College” in signage at Fulton-Hill Park. Councilmember A’Hearn seconded the motion and upon roll call; all voted “aye”.

**Resolution No. 14-21**

**Being a Resolution of the City Council of the City of Morristown, Tennessee to change the name of Heritage Park to Fulton-Hill Park.**

Councilmember Senter made a motion to approve Ordinance No. 3663 on first reading and schedule a public hearing relative to final passage of said ordinance for December 1, 2020. Councilmember A’Hearn seconded the motion and upon roll call; all voted “aye”.

**Ordinance No. 3663**

**Entitled an Ordinance to Annex Certain Territory and to Incorporate Same within the Corporate Boundaries of the City of Morristown, Tennessee. Lot 3 of Alpha Heights Subdivision, Phase 2, currently addressed as 185 Brady Drive, having Hamblen County Tax Parcel ID # 048H A 00700 000.**

Councilmember Garret made a motion to approve Ordinance No. 3664 on first reading and schedule a public hearing relative to final passage of said ordinance for December 1, 2020. Councilmember Pedigo seconded the motion. Following discussion and recommendations from council, roll call was taken and all voted “aye” to pass with amendments.

**Ordinance No. 3664**

**An Ordinance of the City Council of Morristown, Tennessee amending Title 10 (Animal Control), of the Morristown Municipal Code (Fowl in Residential Areas).**

Councilmember Pedigo made a motion to approve Ordinance No. 3651.01 on first reading and schedule a public hearing relative to final passage of said ordinance for December 1, 2020. Councilmember Smith seconded the motion and upon roll call; all voted “aye”.

**Ordinance No. 3651.01**

**An Ordinance to Amend Ordinance 3651, the City of Morristown, Tennessee Annual Budget for Fiscal Year 2020-2021 and to appropriate additional funds totaling \$183,768; necessary for the Department of Justice Coronavirus Emergency Supplemental Funding Program for the Police Department, the U.S. Department of Transportation pass through funding for Hazardous Materials Emergency Planning Grant for the Fire Department, the Tennessee Cares Act Grant and the Airport Taxiway Connector contract.**

Councilmember Senter made a motion to approve Ordinance No. 3651.02 on first reading and schedule a public hearing relative to final passage of said ordinance for December 1, 2020. Councilmember A’Hearn seconded the motion and upon roll call; all voted “aye”.

**Ordinance No. 3651.02**

**To Amend Ordinance Number 3651 the City of Morristown, Tennessee Annual Budget for Fiscal Year 2020-2021 and to appropriate additional funds totaling \$125,000, and reappropriate funds totaling \$209,355; necessary for the Police Department to purchase vehicles according to their Replacement Plan, and to appropriate an additional \$9,800 in the Drug Fund to replace a Criminal Apprehension Unit vehicle that is no longer in service.**

Councilmember Smith made a motion to approve to purchase fourteen (14) vehicles for the Morristown Police Department totaling \$619,346.50 from State-Wide Contract #209. Councilmember A'Hearn seconded the motion and upon roll call, all voted "aye".

Councilmember A'Hearn made a motion of approval to apply for the Traffic Signal Modernization Program Grant; 100% State funded. Councilmember Pedigo seconded the motion and upon roll call; all voted "aye".

Councilmember Senter made a motion to approve to declare vehicles as surplus and to properly dispose of them as determined by the Fleet Manager during the inventory. GovDeals will be utilized for any vehicles deemed saleable. Councilmember Pedigo seconded the motion and upon roll call; all voted "aye".

Councilmember Smith made a motion to approve the contract for the CARES Act Part 4 – Operational Expenses Grant for Morristown Regional Airport in the amount of \$69,000. Councilmember A'Hearn seconded the motion and upon roll call, all voted "aye".

Councilmember Senter made a motion to approve the sale of property to English Mountain Construction & Maintenance in the East Tennessee Progress Center consisting of approximately 4-5 acres of Lot 5 and part of Lot 6. Councilmember A'Hearn seconded the motion and upon roll call; all voted "aye".

Mayor Chesney opened the floor for members of the audience to speak subject to the guidelines provided; No one spoke.

Mayor Gary Chesney adjourned the November 3, 2020 Morristown City Council meeting at 5:58 p.m.

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Mayor

Attest:

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City Administrator

**RESOLUTION NO. 15-21  
PLAN OF SERVICES**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRISTOWN, TENNESSEE ADOPTING A PLAN OF SERVICES FOR THE ANNEXATION OF PROPERTIES LOCATED OFF OF BRADY DRIVE, KNOWN AS LOT 3, PHASE 2 OF THE ALPHA HEIGHTS SUBDIVISION.**

WHEREAS, TENNESSEE CODE ANNOTATED, TITLE 6, CHAPTER 51, AS AMENDED REQUIRES THAT A PLAN OF SERVICES BE ADOPTED BY THE GOVERNING BODY.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND COUNCIL OF THE CITY OF MORRISTOWN, TENNESSEE:

*Property identified as Lot 3 of Phase 2 of the Alpha Heights Subdivision, currently assigned Hamblen County Tax Parcel ID # 048H A 00700 000, addressed as 185 Brady Drive and shown on the attached Exhibit A;*

**Section I.** Pursuant to the provisions of Title 6, Chapter 51, Tennessee Code Annotated, there is hereby adopted, for the area bounded as described above, the following plan of services.

**Police Protection**

Patrolling, radio responses to calls, and other routine police services using present personnel equipment will be provided upon the effective date of annexation.

**Fire Protection**

Fire protection by the present personnel and the equipment of the fire fighting force, within the limitations of available water and distances from fire stations, will be provided upon the effective date of annexation. Water for fire protection to serve the substantially developed annexed area(s) will be provided in accordance with current policies of Morristown Utilities Commission unless authorized by franchise agreement with another utility district which has made service available with capabilities to meet City of Morristown Fire Protection Standards. Any extension of water system infrastructure beyond that of the Morristown Utility Commission policies shall be at the expense of the property owner or developer.

**Water Service**

Morristown Utilities will extend service to properties within its jurisdiction in accordance with the regulations and extension policies of Morristown Utilities Commission

**Sanitary Sewer Service**

Morristown Utilities will extend service to properties within its jurisdiction in accordance with the regulations and extension policies of Morristown Utilities Commission

**Electrical Service**

Electrical service for domestic, commercial and industrial use will be provided at city rates for new lines as extended in accordance with current policies of Morristown Utility Commission. In

those parts of the annexed area presently served by another utility cooperative, the above conditions or terms will begin with the acquisition by the city of such cooperatives or parts thereof, which may be delayed by negotiations and/or litigation.

**Refuse Collection**

The same regular refuse collection service now provided within the City will be extended to the annexed area sixty days following the effective date of annexation.

**Streets**

Reconstruction and resurfacing of streets, installation of storm drainage facilities, construction of curbs and gutters, and other such major improvements, as the need therefore is determined by the governing body, will be accomplished under current policies of the city. Traffic signals, traffic signs, street markings and other traffic control devices will be installed as the need therefore is established by appropriate study and traffic standards. Street name signs where needed will be installed as new street construction requires.

**Inspection Services**

Any inspection services now provided by the City (building, electrical, plumbing, gas, housing, sanitation, etc.) will begin upon the effective date of annexation.

**Planning and Zoning**

The planning and zoning jurisdiction of the city will apply to the annexed area in conjunction with the effective date of annexation.

**Street Lighting**

Street Lights will be installed in accordance to City policies.

**Recreation**

Residents of the annexed area may use all existing recreational facilities, parks, etc., on the effective date of annexation. The same standards and policies now used in the present city will be followed in expanding the recreational program and facilities in the enlarged city.

**Section II.** This Resolution shall become effective from and after its adoption.

Passed on this 1<sup>st</sup> day of December 2020.

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Mayor

ATTEST:

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City Administrator

Exhibit A:



# City of Morristown

Incorporated 1855

DEPARTMENT OF COMMUNITY DEVELOPMENT & PLANNING



TO: Morristown City Council  
FROM: Lori Matthews, Senior Planner  
DATE: November 17<sup>th</sup>, 2020  
SUBJECT: Annexation Request

## **SUBMITTAL:**

A request for annexation has been submitted by property owner William Keith. Mr. Keith owns 185 Brady Drive, which is located off of West Andrew Johnson Highway, just this side of the Chevrolet dealership. It is part of the Alpha Heights Phase II subdivision, which was recorded and built in the early 1950's. Mr. Keith has operated a home occupation at this location which some may know as 'Mama Shirleys Candy'.

The property is within the City's Urban Growth Boundary area, and contiguous to the existing corporate line, which makes it eligible for consideration. Sanitary sewer and public water is already available in front of the house, along Brady Drive, courtesy of Morristown Utilities.

Mr. Keith stated his field lines were failing which prompted this request. No additional Fire or Police Staff should be needed for this annexation.

## **RECOMMENDATION:**

At their regular meeting of November 10<sup>th</sup>, the Morristown Regional Planning Commission voted to forward this annexation request on to City Council for approval.



ORDINANCE NO. 3663  
ENTITLED AN ORDINANCE TO ANNEX CERTAIN TERRITORY AND TO  
INCORPORATE SAME WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF  
MORRISTOWN TENNESSEE

*Annexation of Lot 3 of Alpha Heights Subdivision, Phase 2, currently addressed as 185 Brady Drive, having Hamblen County Tax Parcel ID # 048H A 00700 000, and as shown on the attached Exhibit A;*

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**Section I. WHEREAS,** it now appears that the prosperity of the City and of the territory herein described shall be materially retarded and the safety and welfare of inhabitants and property owners thereof endangered if such territory is not annexed; and

**Section II. WHEREAS,** the annexation of such territory is deemed necessary for the welfare of the residents and property owners thereof and the City as a whole;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MORRISTOWN;

(1) **PURSUANT** to authority conferred by Section 6-51:102 of the Tennessee Code Annotated, there is hereby annexed to the City of Morristown Tennessee and incorporated within the corporate boundaries thereof, the following described territory adjoining the present corporate boundaries:

*Being that parcel as shown as Lot 3 in Phase 2 of the Alpha Heights Subdivision plat recorded in Platbook 2, page 86 at the Hamblen County Courthouse;*

(2) R-1(Single Family Residential) zoning shall be applied upon adoption of the annexation area.

(3) This Ordinance shall become operative thirty days after its passage or as otherwise provided for in Chapter 113, Public Acts of Tennessee, 1955.

(4) This Ordinance shall become effective from and after its passage, the public welfare requiring it.

Passed on first reading the 17<sup>th</sup> day of November 2020.

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Mayor

ATTEST:

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City Administrator

Passed on second and final reading the 1<sup>st</sup> day of December 2020.

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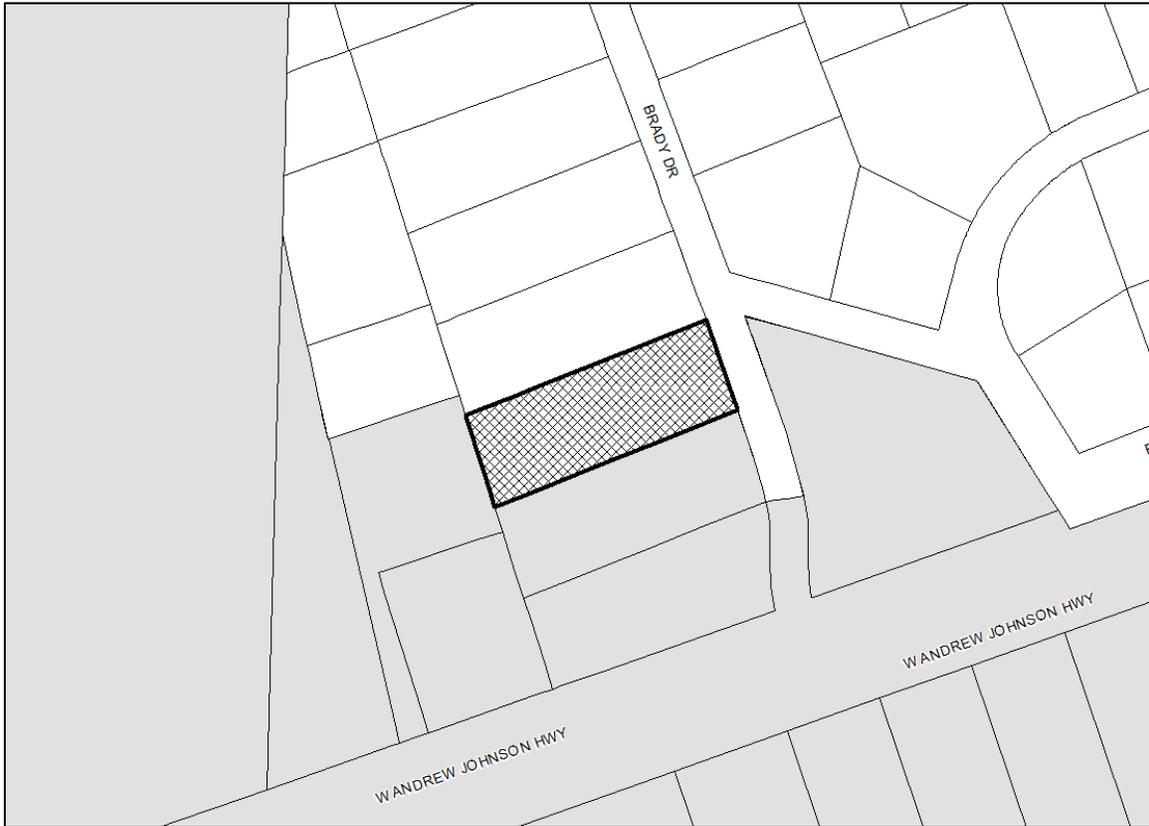
Mayor

ATTEST:

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City Administrator

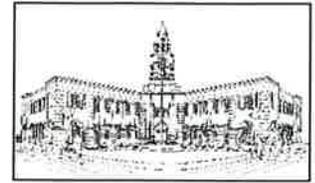
Exhibit A:



# City of Morristown

Incorporated 1855

DEPARTMENT OF COMMUNITY DEVELOPMENT & PLANNING



TO: Morristown City Council  
FROM: Steve Neilson, Development Director   
DATE: December 1, 2020  
SUBJECT: Amendments to the Code of Ordinance, Title 10 – Animal Control

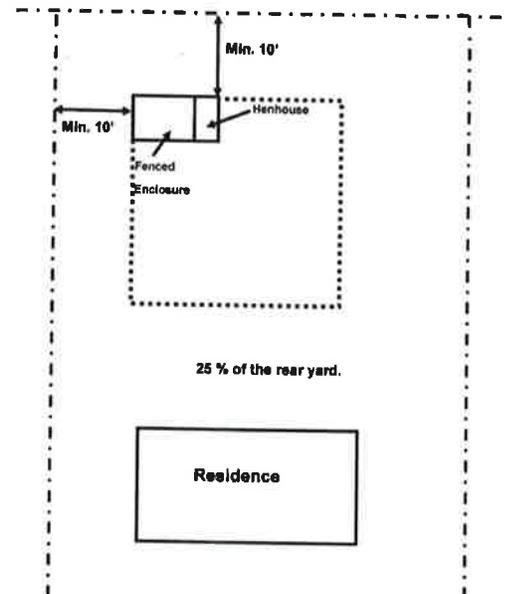
## **BACKGROUND:**

Based on feedback from the November 17<sup>th</sup> Council meeting, staff is recommending three changes to the proposed ordinance which are highlighted in yellow in the attached draft ordinance.

The first change is regarding perimeter yards. If the city is going to allow perimeter yard, it needs to be secured with a fence a minimum of 42 inches in height. At the Council meeting there was a concern expressed that the perimeter yard does not take up the entire back yard. Staff is recommending the perimeter area not to exceed 30 percent of the rear yard.

Staff is proposing the following language:

A perimeter fence around the henhouse and enclosure is permitted. The fence must be a minimum of forty-two (42) inches tall and the total perimeter area shall not exceed twenty-five (25) percent of the rear yard or 1,200 square feet whichever is less. This rear yard is the area between the rear property line and the rear of the house. The exterior fence must be made of materials of the same style, type, and color. Of material that is manufactured for the purpose of fencing.



The second change is regarding chicken manure. There was a concern expressed about chicken manure being deposited directly in city trash containers. Staff is proposing to add language which is consistent with the with Title 17 - REFUSE AND TRASH DISPOSAL which states it is prohibited to deposit in City containers any “Human or animal waste, unless it is placed and secured in a plastic bag or suitable paper bag”.

Staff is proposing the following language:

Chicken manure shall not be deposited in the city’s trash containers unless secured in a plastic bag. See Sec. 17-106, e. (6) Bulk Waste Regulations.

Third, there was discussion regarding vaccinating chickens for Marek’s Disease. I spoke with Mannie Bedwell of the UT Extension who stated that most reputable chick providers (90 + %) vaccinate the chicks

at time they are born/hatched. Also, the vaccine comes in large batches and is difficult for most people or vet. clinics to get. Mannie recommended the following language.

(7) It is highly recommended that all hens be vaccinated for Marek's disease.

**RECOMMENDATION:**

Staff recommends approval of the proposed text amendments.

## Sec. 10-101. - Definitions.

Domesticated hens: Female chickens that may, where permitted, be kept for eggs, education, or pets. Domesticated ducks, geese, turkeys, or other type of fowl are specifically prohibited.

## Sec. 10-108. - Restrictions on keeping animals and fowls within the city.

(a) No person shall keep any animal or fowl, other than domesticated and/or non-livestock animals, within 1,000 feet of any residence, place of business, or public street. unless otherwise permitted.

(b) When any animals or fowl are kept within the town, the building, structure, corral, pen, or other enclosures in which they are kept shall be at all times maintained in a clean and sanitary condition and free from excessive odor. When any animal is confined by the use of a chain, the chain must be a minimum of 15 feet in length and must be attached to the animal by an appropriate collar or harness and must remain free from possible entanglement.

(c) Domesticated hens

The purpose of this section is to provide standards for the keeping of domesticated hens. It is intended to enable residents to keep a small number of hens on a noncommercial basis while limiting the potential adverse impacts on the surrounding neighborhood. The City recognizes that adverse neighborhood impacts may result from the keeping of domesticated chickens as a result of noise, odor, unsanitary animal living conditions, unsanitary waste storage and removal, the attraction of predators, rodents, insects, or parasites, and non-confined animals leaving the owner's property. This section is intended to create standards that ensure that domesticated hens do not adversely impact the neighborhood surrounding the property on which they are kept.

(1) Permit required. A permit is required for the keeping of any domesticated hens.

a. The permit to keep hens is personal to the permittee and may not be assigned. In addition, the permit authorizes the keeping of hens only upon the property described in the permit. The permittee must occupy the residence on the property where the chickens are kept as the permittee's personal, primary residence. An applicant for a permit must either own the property or have written permission from the property owner to be eligible for a permit. Only one (1) permit is allowed per permittee. In the event the permittee is absent from the property for longer than thirty (30) days, the permit automatically shall terminate and become void.

b. A site plan must be submitted with the permit application. The site plan shall include:

- i. The location of the proposed henhouse and enclosure;
- ii. The dimensions and square footage of the proposed henhouse and enclosure; and
- iii. Include the distance of the henhouse and enclosure to side and rear property lines and to the nearest off-premise residence.

(2) Number and type of domesticated hens allowed.

- a. Up to six (6) hens may be allowed.
- b. The provisions of this section only apply to lots with one single family dwelling.
- c. Only hens are allowed. There is no restriction on domestic chicken breeds. However, fowl and poultry other than chickens are not allowed.

(3) Noncommercial use only.

Hens shall be kept for personal use only; no person shall sell eggs or engage in chicken breeding or fertilizer production for commercial purposes. The slaughtering of chickens is prohibited.

(4) Fenced enclosures and henhouses.

- a. Hens must be kept in a fenced enclosure at all times. The fenced enclosure must be either covered, or at least forty-two (42) inches high, in which case, all hens must be wing-clipped to prevent escape. Hens shall be secured within the henhouse during non-daylight hours.
- b. In addition to the fenced enclosure, hens shall be provided with a covered, predator-resistant henhouse. The area of the henhouse structure shall not exceed 100 square feet.
- c. A minimum of two (2) square feet per hen shall be provided for henhouses and six (6) square feet per bird for fenced enclosures.
- d. Fenced enclosures and henhouses must be properly ventilated, clean, dry, and odor-free, kept in a neat and sanitary condition at all times, in a manner that will not disturb the use or enjoyment of neighboring lots due to noise, odor or other adverse impact.
- e. The henhouse and fenced enclosure must provide adequate ventilation and adequate sun, shade and must be constructed in a manner to resist access by rodents, wild birds, and predators, including dogs and cats.
- f. Henhouses shall be enclosed on all sides and shall have a roof and doors. Access doors must be able to be shut and locked at night. Opening windows and vents must be covered with predator- and bird-resistant wire of less than one (1) inch openings.
- g. The materials used in making the henhouse and fence shall be uniform for each element of the structure such that the walls are made of the same material, the roof has the same shingles or other covering, and any windows or openings are constructed using the same materials. The henhouse shall be well-maintained.

- h. Neither the henhouse, fenced enclosure, nor perimeter fence may be located less than ten (10) feet from any property line or twenty-five (25) feet from the nearest residence whichever is greater.
  - i. A perimeter fence around the henhouse and enclosure is permitted. The fence must be a minimum of forty-two (42) inches tall and the total perimeter area shall not exceed twenty-five (25) percent of the rear yard or 1,200 square feet whichever is less. This rear yard is the area between the rear property line and the rear of the house. The exterior fence must be made of materials of the same style, type, and color. Of material that is manufactured for the purpose of fencing.
  - j. Henhouses and enclosures shall not be permitted in front yards.
- (5) Food storage and removal. All stored food for the hens must be kept either indoors or in a weather-resistant container designed to prevent access by animals. Uneaten food shall be removed daily.
- (6) Waste storage and removal. Provision must be made for the storage and removal of chicken manure. All manure for composting or fertilizing shall be contained or enclosed. All other manure not used for composting or fertilizing shall be removed. In addition, the henhouse and surrounding area must be kept free from trash and accumulated droppings. Chicken manure shall not be deposited in the city's trash containers unless secured in a plastic bag. See Sec. 17-106, Bulk Waste Regulations.
- (7) It is highly recommended that all hens be vaccinated for Marek's disease.

BEING AN ORDINANCE OF THE CITY COUNCIL OF MORRISTOWN,  
TENNESSEE AMENDING TITLE 10 (ANIMAL CONTROL), OF THE  
MORRISTOWN MUNICIPAL CODE.

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BE IT ORDAINED BY THE CITY COUNCIL of the City of Morristown that the text of Title 10-  
Sec. 10-101. Definitions and Section 10-108. Restrictions on keeping animals and fowls within the  
city be amended to states:

**Sec. 10-101. - Definitions.**

Domesticated hens: Female chickens that may, where permitted, be kept for eggs, education, or pets.  
Domesticated ducks, geese, turkeys, or other type of fowl are specifically prohibited.

**Sec. 10-108. - Restrictions on keeping animals and fowls within the city.**

- (a) No person shall keep any animal or fowl, other than domesticated and/or non-livestock animals, within 1,000 feet of any residence, place of business, or public street, unless otherwise permitted.
- (b) When any animals or fowl are kept within the town, the building, structure, corral, pen, or other enclosures in which they are kept shall be at all times maintained in a clean and sanitary condition and free from excessive odor. When any animal is confined by the use of a chain, the chain must be a minimum of 15 feet in length and must be attached to the animal by an appropriate collar or harness and must remain free from possible entanglement.
- (c) Domesticated hens  
The purpose of this section is to provide standards for the keeping of domesticated hens. It is intended to enable residents to keep a small number of hens on a noncommercial basis while limiting the potential adverse impacts on the surrounding neighborhood. The City recognizes that adverse neighborhood impacts may result from the keeping of domesticated chickens as a result of noise, odor, unsanitary animal living conditions, unsanitary waste storage and removal, the attraction of predators, rodents, insects, or parasites, and non-confined animals leaving the owner's property. This section is intended to create standards that ensure that domesticated hens do not adversely impact the neighborhood surrounding the property on which they are kept.
  - (1) *Permit required.* A permit is required for the keeping of any domesticated hens.
    - a. The permit to keep hens is personal to the permittee and may not be assigned. In addition, the permit authorizes the keeping of hens only upon the property described in the permit. The permittee must occupy the residence on the property where the chickens are kept as the permittee's personal, primary residence. An applicant for a permit must either own the property or have written permission from the property owner to be eligible for a permit. Only one (1) permit is allowed per permittee. In the event the permittee is absent from the property for

longer than thirty (30) days, the permit automatically shall terminate and become void.

- b. A site plan must be submitted with the permit application. The site plan shall include:
  - i. The location of the proposed henhouse and enclosure;
  - ii. The dimensions and square footage of the proposed henhouse and enclosure; and
  - iii. Include the distance of the henhouse and enclosure to side and rear property lines and to the nearest off-premise residence.

(2) Number and type of domesticated hens allowed.

- a. Up to six (6) hens may be allowed.
- b. The provisions of this section only apply to lots with one single family dwelling.
- c. Only hens are allowed. There is no restriction on domestic chicken breeds. However, fowl and poultry other than chickens are not allowed.

(3) Noncommercial use only.

Hens shall be kept for personal use only; no person shall sell eggs or engage in chicken breeding or fertilizer production for commercial purposes. The slaughtering of chickens is prohibited.

(4) Fenced enclosures and henhouses.

- a. Hens must be kept in a fenced enclosure at all times. The fenced enclosure must be either covered, or at least forty-two (42) inches high, in which case, all hens must be wing-clipped to prevent escape. Hens shall be secured within the henhouse during non-daylight hours.
- b. In addition to the fenced enclosure, hens shall be provided with a covered, predator-resistant henhouse. The area of the henhouse structure shall not exceed 100 square feet.
- c. A minimum of two (2) square feet per hen shall be provided for henhouses and six (6) square feet per bird for fenced enclosures.
- d. Fenced enclosures and henhouses must be properly ventilated, clean, dry, and odor-free, kept in a neat and sanitary condition at all times, in a manner that will not disturb the use or enjoyment of neighboring lots due to noise, odor or other adverse impact.
- e. The henhouse and fenced enclosure must provide adequate ventilation and adequate sun, shade and must be constructed in a manner to resist access by rodents, wild birds, and predators, including dogs and cats.

- f. Henhouses shall be enclosed on all sides and shall have a roof and doors. Access doors must be able to be shut and locked at night. Opening windows and vents must be covered with predator- and bird-resistant wire of less than one (1) inch openings.
- g. The materials used in making the henhouse and fence shall be uniform for each element of the structure such that the walls are made of the same material, the roof has the same shingles or other covering, and any windows or openings are constructed using the same materials. The henhouse shall be well-maintained.
- h. Neither the henhouse, fenced enclosure, nor the perimeter fence may be located less than ten (10) feet from any property line or twenty-five (25) feet from the nearest residence whichever is greater.
- i. A perimeter fence around the henhouse and enclosure is permitted. The fence must be a minimum of forty-two (42) inches tall and the total perimeter area shall not exceed twenty-five (25) percent of the rear yard or 1,200 square feet whichever is less. This rear yard is the area between the rear property line and the rear of the house. The exterior fence must be made of materials of the same style, type, and color. Of material that is manufactured for the purpose of fencing.
- j. Henhouses and enclosures shall not be permitted in front yards.

(5) Food storage and removal. All stored food for the hens must be kept either indoors or in a weather-resistant container designed to prevent access by animals. Uneaten food shall be removed daily.

(6) Waste storage and removal. Provision must be made for the storage and removal of chicken manure. All manure for composting or fertilizing shall be contained or enclosed. All other manure not used for composting or fertilizing shall be removed. In addition, the henhouse and surrounding area must be kept free from trash and accumulated droppings. Chicken manure shall not be deposited in the city's trash containers unless secured in a plastic bag. See Sec. 17-106, Bulk Waste Regulations.

(7) It is highly recommended that all hens be vaccinated for Marek's disease.

BE IT FURTHER ORDAINED that this ordinance shall take effect from and after the date of its final passage, the public welfare requiring it.

Passed on first reading the 17th day of November, 2020.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Administrator

Passed on second and final reading the 1st day of December, 2020.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Administrator

# APPROPRIATION ORDINANCE

Ordinance Number:

3651.01

TO AMEND ORDINANCE NUMBER 3651, THE CITY OF MORRISTOWN, TENNESSEE ANNUAL BUDGET FOR FISCAL YEAR 2020-2021 AND TO APPROPRIATE ADDITIONAL FUNDS TOTALING \$183,768; NECESSARY FOR THE DEPARTMENT OF JUSTICE CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING PROGRAM FOR THE POLICE DEPARTMENT, THE U.S. DEPARTMENT OF TRANSPORTATION PASS THROUGH FUNDING FOR HAZARDOUS MATERIALS EMERGENCY PLANNING GRANT FOR THE FIRE DEPARTMENT, THE TENNESSEE CARES ACT GRANT AND THE AIRPORT TAXIWAY CONNECTOR CONTRACT.

Be it ordained by the Council of the City of Morristown Tennessee that Ordinance Number 3651 identifying the revenue and expenditure accounts of the City of Morristown contained in the annual budget for the fiscal year 2020-2021 is hereby amended and funds are herewith appropriated or adjusted as presented.

FUND	DEPARTMENT	CODE	ACCOUNT DESCRIPTION	REVENUE	FUND BALANCE	EXPENDITURES	
				Increase	Increase	Increase	Decrease
General (#110)	Revenue	110.33604	Federal - Department of Justice Grants	\$43,683			
General (#110)	Police - Patrol & Traffic	42110.801.02011	Grants & Other Subsidies - CESF			\$ 43,683	
General (#110)	Revenue	110.33590	State of Tennessee - Other State Revenue	\$448,890			
General (#110)	Fund Balance	110.27100	Unassigned Fund Balance		\$ 366,561		
General (#110)	Facilities Maintenance	43120.399	Other Contracted Services			\$ 10,457	
General (#110)	Facilities Maintenance	43120.429	General Operating Supplies			\$ 45,148	
General (#110)	Parks & Maintenance	44430.399	Other Contracted Services			\$ 26,724	
General (#110)	Revenue	110.33605	Fire Department Grants	\$11,200			
General (#110)	Firefighting	42240.818	Federal Grants			\$ 11,200	
General (#110)	Revenue	110.36000	Other Revenues	\$46,556			
General (#110)	Airport	48100.399	Other Contracted Services			\$ 46,556	
			Totals	\$ 550,329	\$ 366,561	\$ 183,768	\$ -

PASSED ON FIRST READING THIS 17th Day of November 2020

\_\_\_\_\_  
Mayor Signature

ATTEST:

\_\_\_\_\_  
City Administrator Signature

PASSED ON SECOND READING THIS 1st Day of December 2020

\_\_\_\_\_  
Mayor Signature

ATTEST:

\_\_\_\_\_  
City Administrator Signature



**RESOLUTION NO. 16-21**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRISTOWN, TENNESSEE calling for a Municipal Election on May 4, 2021, for the election of one Councilmember to represent Ward 1; one Councilmember to represent Ward 3; and one at-large Councilmember.**

WHEREAS, the City of Morristown conducts Biennial Elections; and

WHEREAS, the 2021 Election will be held on May 4, 2021; and

WHEREAS, the 2021 Election will be for the election of one Councilmember to represent Ward 1; one Councilmember to represent Ward 3; and one at-large Councilmember.

NOW, THEREFORE, BE IT RESOLVED THAT, the City of Morristown hereby calls for a Municipal Election on May 4, 2021 for the election of one Councilmember to represent Ward 1; one Councilmember to represent Ward 3; and one at-large Councilmember.

Adopted this the 1st day of December 2020.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Administrator

December 1, 2020

Anthony W. Cox  
City Administrator  
City of Morristown  
100 West First North Street  
Morristown, Tennessee 37814

Subject: Morristown Community Center-Recommendation of Award of General Contractor

Dear Mr. Cox:

Please accept this recommendation to Morristown City Council to award the General Contract for construction of the above subject project. BurWil recommends awarding the General Contract to Path Construction based on the information herein.

BurWil Construction, along with Lose Design, reviewed the bids received for the project. The City received five competitive bids for the work. The low bidder on base bid was Joseph Construction at \$26,445,000. However, as the project is within budget, BurWil recommends that the alternates 1 through 5 be awarded. When considering all five alternates as part of the award, Path Construction is determined to be the low responsible bidder in the amount of \$27,927,000. BurWil along with Lose Design had a bid review meeting with the executives and operations personnel of Path Construction on Friday November 20, 2020. After that meeting, and review of the documents received by the bidder’s bid submission, we determined that Path is the lowest responsible bidder when all five alternates are considered.

Path’s recommended contract amount is derived as follows:

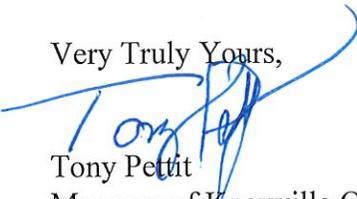
Path’s Base Bid	\$26,947,000.00
Alternate #1 Add Splash Pad	\$ 925,000.00
Alternate #2 Add Public Works Sign	\$ 13,500.00
Alternate #3 Add CC Sign	\$ 21,500.00
Alternate #4 Add CC 2nd Sign	\$ 4,000.00
Alternate #5 Add Low Voltage Terminations	\$ 16,000.00
Recommended Contract Amount to Path	\$27,927,000.00

Included in the contract amount is the removal and replacement of unsuitable soils as an allowance (below design elevations) of 4,500 cubic yards. This allowance has a unit price

add/deduct of \$39.56 per cubic yard. This allowance will be adjusted for actual unsuitable soils moved at the add/deduct price of the \$39.56 per cubic yard.

Lose Design has verified Path's general contractor's license, Path's bid bond, and bonding company and found Path to be in compliance with the bid documents. If you require any further information or have questions regarding the information contained herein, do not hesitate to contact this writer.

Very Truly Yours,



Tony Pettit  
Manager of Knoxville Operations  
Mobile: 865.776.3836  
[tpettit@burwil.com](mailto:tpettit@burwil.com)

CC: Joey Barnard  
Sean Lose  
Michael Black

# 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 First day of December in the year Two Thousand Twenty  
(In words, indicate day, month and year.)

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

City of Morristown  
100 West First North St.  
Morristown, TN 37814  
Telephone Number: 423-585-4614

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

Matthew Johnson, Path Construction Northeast, Inc.  
125 E Algonquin RD  
Arlington Heights, IL 60005  
Telephone Number: 847-398-7100  
Fax Number: 847-398-7101

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

17007-3 Morristown Community Center  
4355 Durham Landing  
Morristown, TN 37813  
Construction of building and site improvements per the permitted construction documents, including base bid, alternates 1-5\*, and unit price allowances, as submitted on November 19th, 2020.  
\*Add Alternate #5 to be held for the bid period of 60 days.

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

Sean Guth, Lose Design  
2809 Foster Ave  
Nashville, TN 37210  
Telephone Number: 615-242-0040

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

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

Init.

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User Notes:

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**TABLE OF ARTICLES**

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

**EXHIBIT A INSURANCE AND BONDS**

**ARTICLE 1 THE CONTRACT DOCUMENTS**

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

**ARTICLE 2 THE WORK OF THIS CONTRACT**

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

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

**§ 3.1** The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

The date of this Agreement.

A date set forth in a notice to proceed issued by the Owner.

Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

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

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

**§ 3.3 Substantial Completion**

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

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

[ X ] Not later than Four Hundred Eighty-Five ( 485 ) calendar days from the date of commencement of the Work.

[ ] By the following date:

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

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

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

**ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Twenty-Seven Million Nine Hundred and Twenty-Seven Thousand Dollars and Zero Cents (\$ 27927000.00 ), 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
1. Splash Pad, Paving, and Associated Utilities =	\$925,000.00
2. Public Works Sign =	\$13,500.00
3. Community Center Sign =	\$21,500.00
4. Secondary Access Sign =	\$4,000.00
5. Low Voltage / Data / Cabling Terminations=	\$16,000.00

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

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

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

Item	Price
Undercutting Poor Soils Base QTY 4,500 cubic yards	\$178,000.00

**§ 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)
Undercutting Poor Soils	Cubic Yard	\$39.56

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**§ 4.5** Liquidated damages, if any:

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

\$1,000.00 per day

**§ 4.6** Other:

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

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

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

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

**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the following 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
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

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User Notes:

- .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.)*

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.)*

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

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

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

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

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

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

### § 5.2 Final Payment

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

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

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

### § 5.3 Interest

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

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

NaN %

## 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.)*

Sean Guth  
Lose Design  
2809 Foster Ave  
Nashville, TN 37210  
Telephone Number: 6152420040

### § 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 Hamblen County, TN

Other *(Specify)*

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

## ARTICLE 7 TERMINATION OR SUSPENSION

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

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

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

## ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

Tony Pettit  
BurWil Construction Company

Init.

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User Notes:

1545 Western Avenue  
Suite 208  
Knoxville, TN. 37921  
Telephone Number: (865)409-4825

Email Address: Tpettit@burwil.com

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

Matthew Johnson  
Path Construction Northeast, INC.  
125 E Algonquin RD  
Arlington Heights, IL 60005  
847-398-7100

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

**§ 8.5 Insurance and Bonds**

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

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

**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:  
*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

**§ 8.7** Other provisions:

Refer to the project manual specification section 000010-Supplemental Conditions of the Contract, Article 11: Insurance and Bonds. Add the following as an additional insured party to Contractor's liability policies, Article 11.1.1.7.C-BurWil Construction-Construction Manager as Advisor

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

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

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

- .5 Drawings

Init.

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Number	Title	Date
Volume 1	Site Package	09/23/2020
Volume 2	Construction Documents	10/01/2020
Volume 3	Architectural Struct, Mech, Plumb, Elect., & Aqua.	10/01/2020

**.6 Specifications**

Section	Title	Date	Pages
	Project Manual	10/01/2020	

**.7 Addenda, if any:**

Number	Date	Pages
1	10/16/2020	79
2	10/23/2020	189
3	10/30/2020	203
4	11/06/2020	109
5	11/13/2020	363
6	11/17/2020	42

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

**.8 Other Exhibits:**

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

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

The Sustainability Plan:

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

Supplementary and other Conditions of the Contract:

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

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

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

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

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**OWNER** *(Signature)*

---

*(Printed name and title)*

---

**CONTRACTOR** *(Signature)*

---

*(Printed name and title)*

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This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:24:45 ET on 11/23/2020.

### **PAGE 1**

**AGREEMENT** made as of the First day of December in the year Two Thousand Twenty

...

City of Morristown  
100 West First North St.  
Morristown, TN 37814  
Telephone Number: 423-585-4614

...

Matthew Johnson, Path Construction Northeast, Inc.  
125 E Algonquin RD  
Arlington Heights, IL 60005  
Telephone Number: 847-398-7100  
Fax Number: 847-398-7101

...

17007-3 Morristown Community Center  
4355 Durham Landing  
Morristown, TN 37813  
Construction of building and site improvements per the permitted construction documents, including base bid, alternates 1-5\*, and unit price allowances, as submitted on November 19th, 2020.  
\*Add Alternate #5 to be held for the bid period of 60 days.

...

Sean Guth, Lose Design  
2809 Foster Ave  
Nashville, TN 37210  
Telephone Number: 615-242-0040

### **PAGE 2**

[  ] A date set forth in a notice to proceed issued by the Owner.

### **PAGE 3**

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[ X ] Not later than Four Hundred Eighty-Five ( 485 ) calendar days from the date of commencement of the Work.

...

§ 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 Twenty-Seven Million Nine Hundred and Twenty-Seven Thousand Dollars and Zero Cents (\$ 27927000.00 ), subject to additions and deductions as provided in the Contract Documents.

...

<u>1. Splash Pad, Paving, and Associated Utilities =</u>	<u>\$925,000.00</u>
<u>2. Public Works Sign =</u>	<u>\$13,500.00</u>
<u>3. Community Center Sign =</u>	<u>\$21,500.00</u>
<u>4. Secondary Access Sign =</u>	<u>\$4,000.00</u>
<u>5. Low Voltage / Data / Cabling Terminations=</u>	<u>\$16,000.00</u>

...

<u>Item</u>	<u>Price</u>	<u>Conditions for Acceptance</u>
-------------	--------------	----------------------------------

<u>Item</u>	<u>Price</u>	<u>Conditions for Acceptance</u>
-------------	--------------	----------------------------------

...

<u>Undercutting Poor Soils Base QTY 4,500 cubic yards</u>	<u>\$178,000.00</u>	
---	---------------------	--

...

<u>Undercutting Poor Soils</u>	<u>Cubic Yard</u>	<u>\$39.56</u>
--------------------------------	-------------------	----------------

PAGE 4

\$1,000.00 per day

...

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the following 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.

PAGE 5

5%

**PAGE 6**

NaN %

...

Sean Guth  
Lose Design  
2809 Foster Ave  
Nashville, TN 37210  
Telephone Number: 6152420040

...

[ X ] Litigation in a court of competent jurisdiction Hamblen County, TN

...

Tony Pettit  
BurWil Construction Company  
1545 Western Avenue  
Suite 208  
Knoxville, TN, 37921  
Telephone Number: (865)409-4825

Email Address: Tpettit@burwil.com

**PAGE 7**

Matthew Johnson  
Path Construction Northeast, INC.  
125 E Algonquin RD  
Arlington Heights, IL 60005  
847-398-7100

...

Refer to the project manual specification section 000010-Supplemental Conditions of the Contract, Article 11: Insurance and Bonds. Add the following as an additional insured party to Contractor's liability policies, Article 11.1.1.7.C-BurWil Construction-Construction Manager as Advisor

**PAGE 8**

<u>Volume 1</u>	<u>Site Package</u>	<u>09/23/2020</u>
<u>Volume 2</u>	<u>Construction Documents</u>	<u>10/01/2020</u>
<u>Volume 3</u>	<u>Architectural</u>	<u>10/01/2020</u>
	<u>Struct. Mech, Plumb,</u>	
	<u>Elect., &amp; Aqua.</u>	

...

Project Manual                      10/01/2020

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...

<u>1</u>	<u>10/16/2020</u>	<u>79</u>
<u>2</u>	<u>10/23/2020</u>	<u>189</u>
<u>3</u>	<u>10/30/2020</u>	<u>203</u>
<u>4</u>	<u>11/06/2020</u>	<u>109</u>
<u>5</u>	<u>11/13/2020</u>	<u>363</u>
<u>6</u>	<u>11/17/2020</u>	<u>42</u>

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:24:45 ET on 11/23/2020 under Order No. 7333682125 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*

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# AIA® Document A201® – 2007

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

### **for the following PROJECT:**

*(Name and location or address)*  
17007-3 Morristown Community Center  
4355 Durham Landing  
Morristown, TN 37813

### **THE OWNER:**

*(Name, legal status and address)*  
City of Morristown  
100 West First North Street  
Morristown, TN 37814

### **THE ARCHITECT:**

*(Name, legal status and address)*  
Sean Guth, Lose Design dba Lose & Associates, LLC  
2809 Foster Ave  
Nashville, TN 37210

### **TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS**
- 2 OWNER**
- 3 CONTRACTOR**
- 4 ARCHITECT**
- 5 SUBCONTRACTORS**
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
- 7 CHANGES IN THE WORK**
- 8 TIME**
- 9 PAYMENTS AND COMPLETION**
- 10 PROTECTION OF PERSONS AND PROPERTY**
- 11 INSURANCE AND BONDS**
- 12 UNCOVERING AND CORRECTION OF WORK**
- 13 MISCELLANEOUS PROVISIONS**
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT**
- 15 CLAIMS AND DISPUTES**

### **ADDITIONS AND DELETIONS:**

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

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

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## INDEX

(Topics and numbers in bold are section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, 12.3

### Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

### Access to Work

3.16, 6.2.1, 12.1

### Accident Prevention

10

### Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7, 14.1, 15.2

### Addenda

1.1.1, 3.11

### Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, 13.5

### Additional Insured

11.1.4

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, 15.1.5

### Administration of the Contract

3.1.3, 4.2, 9.4, 9.5

### Advertisement or Invitation to Bid

1.1.1

### Aesthetic Effect

4.2.13

### Allowances

3.8, 7.3.8

### All-risk Insurance

11.3.1, 11.3.1.1

### Applications for Payment

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5.1, 9.6.3, 9.7, 9.10,

11.1.3

### Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1

### Arbitration

8.3.1, 11.3.10, 13.1, 15.3.2, 15.4

### ARCHITECT

4

### Architect, Definition of

4.1.1

### Architect, Extent of Authority

2.4, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

### Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

### Architect's Additional Services and Expenses

2.4, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

### Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

### Architect's Approvals

2.4, 3.1.3, 3.5, 3.10.2, 4.2.7

### Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

### Architect's Copyright

1.1.7, 1.5

### Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3

### Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

### Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

### Architect's Interpretations

4.2.11, 4.2.12

### Architect's Project Representative

4.2.10

### Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

### Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

### Architect's Representations

9.4.2, 9.5.1, 9.10.1

### Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

### Asbestos

10.3.1

### Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

### Award of Separate Contracts

6.1.1, 6.1.2

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

5.2

### Basic Definitions

1.1

### Bidding Requirements

1.1.1, 5.2.1, 11.4.1

### Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1

### Boiler and Machinery Insurance

11.3.2

### Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, 11.4

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Building Permit  
 3.7.1  
 Capitalization  
 1.3  
 Certificate of Substantial Completion  
 9.8.3, 9.8.4, 9.8.5  
 Certificates for Payment  
 4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7,  
 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3  
 Certificates of Inspection, Testing or Approval  
 13.5.4  
 Certificates of Insurance  
 9.10.2, 11.1.3  
 Change Orders  
 1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8,  
 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10,  
 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9,  
 12.1.2, 15.1.3  
 Change Orders, Definition of  
 7.2.1  
 CHANGES IN THE WORK  
 2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,  
 11.3.9  
 Claims, Definition of  
 15.1.1  
 CLAIMS AND DISPUTES  
 3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4  
 Claims and Timely Assertion of Claims  
 15.4.1  
 Claims for Additional Cost  
 3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4  
 Claims for Additional Time  
 3.2.4, 3.7.4, 6.1.1, 8.3.2, 10.3.2, 15.1.5  
 Concealed or Unknown Conditions, Claims for  
 3.7.4  
 Claims for Damages  
 3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,  
 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6  
 Claims Subject to Arbitration  
 15.3.1, 15.4.1  
 Cleaning Up  
 3.15, 6.3  
 Commencement of the Work, Conditions Relating to  
 2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,  
 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,  
 15.1.4  
 Commencement of the Work, Definition of  
 8.1.2  
 Communications Facilitating Contract  
 Administration  
 3.9.1, 4.2.4  
 Completion, Conditions Relating to  
 3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,  
 9.10, 12.2, 13.7, 14.1.2  
 COMPLETION, PAYMENTS AND  
 9  
 Completion, Substantial  
 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,  
 12.2, 13.7  
 Compliance with Laws  
 1.6, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2,  
 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1,  
 14.2.1.3, 15.2.8, 15.4.2, 15.4.3  
 Concealed or Unknown Conditions  
 3.7.4, 4.2.8, 8.3.1, 10.3  
 Conditions of the Contract  
 1.1.1, 6.1.1, 6.1.4  
 Consent, Written  
 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,  
 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2  
 Consolidation or Joinder  
 15.4.4  
 CONSTRUCTION BY OWNER OR BY  
 SEPARATE CONTRACTORS  
 1.1.4, 6  
 Construction Change Directive, Definition of  
 7.3.1  
 Construction Change Directives  
 1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3,  
 9.3.1.1  
 Construction Schedules, Contractor's  
 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2  
 Contingent Assignment of Subcontracts  
 5.4, 14.2.2.2  
 Continuing Contract Performance  
 15.1.3  
 Contract, Definition of  
 1.1.2  
 CONTRACT, TERMINATION OR SUSPENSION  
 OF THE  
 5.4.1.1, 11.3.9, 14  
 Contract Administration  
 3.1.3, 4, 9.4, 9.5  
 Contract Award and Execution, Conditions Relating  
 to  
 3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1  
 Contract Documents, Copies Furnished and Use of  
 1.5.2, 2.2.5, 5.3  
 Contract Documents, Definition of  
 1.1.1  
 Contract Sum  
 3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4,  
 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4,  
 15.2.5  
 Contract Sum, Definition of  
 9.1  
 Contract Time  
 3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4,  
 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2,  
 15.1.5.1, 15.2.5  
 Contract Time, Definition of  
 8.1.1  
 CONTRACTOR  
 3

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 User Notes:

(389ADA3B)

Contractor, Definition of  
3.1, 6.1.2

Contractor's Construction Schedules  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Contractor's Liability Insurance  
11.1

Contractor's Relationship with Separate Contractors and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors  
1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect  
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents  
3.2

Contractor's Right to Stop the Work  
9.7

Contractor's Right to Terminate the Contract  
14.1, 15.1.6

Contractor's Submittals  
3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent  
3.9, 10.2.6

Contractor's Supervision and Construction Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance  
11.1.1.8, 11.2

Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications  
1.5, 2.2.5, 3.11

Copyrights  
1.5, 3.17

Correction of Work  
2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

Correlation and Intent of the Contract Documents  
1.2

Cost, Definition of  
7.3.7

Costs  
2.4, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

Cutting and Patching  
3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 11.3.1, 12.2.4

Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay  
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

Date of Commencement of the Work, Definition of  
8.1.2

Date of Substantial Completion, Definition of  
8.1.3

Day, Definition of  
8.1.4

Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification  
9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of  
2.3, 2.4, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

Delays and Extensions of Time  
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

Disputes  
6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site  
3.11

Drawings, Definition of  
1.1.5

Drawings and Specifications, Use and Ownership of  
3.11

Effective Date of Insurance  
8.2.2, 11.1.2

Emergencies  
10.4, 14.1.1.2, 15.1.4

Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

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(3B9ADA3B)

Execution and Progress of the Work  
 1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,  
 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,  
 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3  
 Extensions of Time  
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,  
 10.4, 14.3, 15.1.5, 15.2.5  
 Failure of Payment  
 9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2  
 Faulty Work  
 (See Defective or Nonconforming Work)  
 Final Completion and Final Payment  
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5,  
 12.3, 14.2.4, 14.4.3  
 Financial Arrangements, Owner's  
 2.2.1, 13.2.2, 14.1.1.4  
 Fire and Extended Coverage Insurance  
 11.3.1.1  
**GENERAL PROVISIONS**  
 1  
 Governing Law  
 13.1  
 Guarantees (See Warranty)  
 Hazardous Materials  
 10.2.4, 10.3  
 Identification of Subcontractors and Suppliers  
 5.2.1  
 Indemnification  
 3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,  
 11.3.7  
 Information and Services Required of the Owner  
 2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,  
 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,  
 13.5.2, 14.1.1.4, 14.1.4, 15.1.3  
 Initial Decision  
 15.2  
 Initial Decision Maker, Definition of  
 1.1.8  
 Initial Decision Maker, Decisions  
 14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5  
 Initial Decision Maker, Extent of Authority  
 14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,  
 15.2.5  
 Injury or Damage to Person or Property  
 10.2.8, 10.4  
 Inspections  
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
 9.9.2, 9.10.1, 12.2.1, 13.5  
 Instructions to Bidders  
 1.1.1  
 Instructions to the Contractor  
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2  
 Instruments of Service, Definition of  
 1.1.7  
 Insurance  
 3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11  
 Insurance, Boiler and Machinery  
 11.3.2  
 Insurance, Contractor's Liability  
 11.1  
 Insurance, Effective Date of  
 8.2.2, 11.1.2  
 Insurance, Loss of Use  
 11.3.3  
 Insurance, Owner's Liability  
 11.2  
 Insurance, Property  
 10.2.5, 11.3  
 Insurance, Stored Materials  
 9.3.2  
**INSURANCE AND BONDS**  
 11  
 Insurance Companies, Consent to Partial Occupancy  
 9.9.1  
 Intent of the Contract Documents  
 1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4  
 Interest  
 13.6  
 Interpretation  
 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1  
 Interpretations, Written  
 4.2.11, 4.2.12, 15.1.4  
 Judgment on Final Award  
 15.4.2  
 Labor and Materials, Equipment  
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,  
 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2  
 Labor Disputes  
 8.3.1  
 Laws and Regulations  
 1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,  
 10.2.2, 11.1.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6,  
 14, 15.2.8, 15.4  
 Liens  
 2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8  
 Limitations, Statutes of  
 12.2.5, 13.7, 15.4.1.1  
 Limitations of Liability  
 2.3, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7,  
 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3,  
 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2  
 Limitations of Time  
 2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,  
 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15  
 Loss of Use Insurance  
 11.3.3  
 Material Suppliers  
 1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5  
 Materials, Hazardous  
 10.2.4, 10.3  
 Materials, Labor, Equipment and

Init.

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(3B9ADA3B)

5

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

**Means, Methods, Techniques, Sequences and Procedures of Construction**  
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

**Mechanic's Lien**  
2.1.2, 15.2.8

**Mediation**  
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1

**Minor Changes in the Work**  
1.1.1, 3.12.8, 4.2.8, 7.1, 7.4

**MISCELLANEOUS PROVISIONS**  
13

**Modifications, Definition of**  
1.1.1

**Modifications to the Contract**  
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.3.1

**Mutual Responsibility**  
6.2

**Nonconforming Work, Acceptance of**  
9.6.6, 9.9.3, 12.3

**Nonconforming Work, Rejection and Correction of**  
2.3, 2.4, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

**Notice**  
2.2.1, 2.3, 2.4, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7, 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

**Notice, Written**  
2.3, 2.4, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, 13.3, 14, 15.2.8, 15.4.1

**Notice of Claims**  
3.7.4, 10.2.8, 15.1.2, 15.4

**Notice of Testing and Inspections**  
13.5.1, 13.5.2

**Observations, Contractor's**  
3.2, 3.7.4

**Occupancy**  
2.2.2, 9.6.6, 9.8, 11.3.1.5

**Orders, Written**  
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1

**OWNER**  
2

**Owner, Definition of**  
2.1.1

**Owner, Information and Services Required of the**  
2.1.2, 2.2, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

**Owner's Authority**  
1.5, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,

7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

**Owner's Financial Capability**  
2.2.1, 13.2.2, 14.1.1.4

**Owner's Liability Insurance**  
11.2

**Owner's Relationship with Subcontractors**  
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**  
2.4, 14.2.2

**Owner's Right to Clean Up**  
6.3

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

**Owner's Right to Stop the Work**  
2.3

**Owner's Right to Suspend the Work**  
14.3

**Owner's Right to Terminate the Contract**  
14.2

**Ownership and Use of Drawings, Specifications and Other Instruments of Service**  
1.1.1, 1.1.6, 1.1.7, 1.5, 2.2.5, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

**Partial Occupancy or Use**  
9.6.6, 9.9, 11.3.1.5

**Patching, Cutting and**  
3.14, 6.2.5

**Patents**  
3.17

**Payment, Applications for**  
4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**  
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

**Payment, Failure of**  
9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

**Payment, Final**  
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3, 13.7, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**  
7.3.7.4, 9.6.7, 9.10.3, 11.4

**Payments, Progress**  
9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**PAYMENTS AND COMPLETION**  
9

**Payments to Subcontractors**  
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

**PCB**  
10.3.1

**Performance Bond and Payment Bond**  
7.3.7.4, 9.6.7, 9.10.3, 11.4

**Permits, Fees, Notices and Compliance with Laws**  
2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

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6

PERSONS AND PROPERTY, PROTECTION OF  
10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.3

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,  
10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14,  
15.2.8, 15.4

Rejection of Work

3.5, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1,  
9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1,  
5.1.2, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field Conditions  
by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and  
Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and  
Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,  
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4,  
13.4, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

Specifications, Definition of

1.1.6

Specifications

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,  
9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3,  
9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.3.7

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,  
12.2, 13.7

Substantial Completion, Definition of

9.8.1

Init.

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(389ADA3B)

Substitution of Subcontractors	2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4
5.2.3, 5.2.4	
Substitution of Architect	Time Limits on Claims
4.1.3	3.7.4, 10.2.8, 13.7, 15.1.2
Substitutions of Materials	Title to Work
3.4.2, 3.5, 7.3.8	9.3.2, 9.3.3
Sub-subcontractor, Definition of	Transmission of Data in Digital Form
5.1.2	1.6
Subsurface Conditions	UNCOVERING AND CORRECTION OF WORK
3.7.4	12
Successors and Assigns	Uncovering of Work
13.2	12.1
Superintendent	Unforeseen Conditions, Concealed or Unknown
3.9, 10.2.6	3.7.4, 8.3.1, 10.3
Supervision and Construction Procedures	Unit Prices
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3	7.3.3.2, 7.3.4
Surety	Use of Documents
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7	1.1.1, 1.5, 2.2.5, 3.12.6, 5.3
Surety, Consent of	Use of Site
9.10.2, 9.10.3	3.13, 6.1.1, 6.2.1
Surveys	Values, Schedule of
2.2.3	9.2, 9.3.1
Suspension by the Owner for Convenience	Waiver of Claims by the Architect
14.3	13.4.2
Suspension of the Work	Waiver of Claims by the Contractor
5.4.2, 14.3	9.10.5, 13.4.2, 15.1.6
Suspension or Termination of the Contract	Waiver of Claims by the Owner
5.4.1.1, 14	9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6
Taxes	Waiver of Consequential Damages
3.6, 3.8.2.1, 7.3.7.4	14.2.4, 15.1.6
Termination by the Contractor	Waiver of Liens
14.1, 15.1.6	9.10.2, 9.10.4
Termination by the Owner for Cause	Waivers of Subrogation
5.4.1.1, 14.2, 15.1.6	6.1.1, 11.3.7
Termination by the Owner for Convenience	Warranty
14.4	3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7
Termination of the Architect	Weather Delays
4.1.3	15.1.5.2
Termination of the Contractor	Work, Definition of
14.2.2	1.1.3
TERMINATION OR SUSPENSION OF THE CONTRACT	Written Consent
14	1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2
Tests and Inspections	Written Interpretations
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1, 12.2.1, 13.5	4.2.11, 4.2.12
TIME	Written Notice
8	2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, 13.3, 14, 15.4.1
Time, Delays and Extensions of	Written Orders
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5	1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2
Time Limits	

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

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

#### **§ 1.1.2 THE CONTRACT**

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

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

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

#### **§ 1.1.6 THE SPECIFICATIONS**

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

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

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

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

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

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

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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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

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

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

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

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

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

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

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10

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

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

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

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

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

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

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

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

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

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

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

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

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11

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

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

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

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

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

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

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

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

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

### **§ 3.4 LABOR AND MATERIALS**

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

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12

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

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

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

### **§ 3.5 WARRANTY**

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

### **§ 3.6 TAXES**

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

### **§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

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

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

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

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

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13

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

### **§ 3.8 ALLOWANCES**

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

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

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

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

### **§ 3.9 SUPERINTENDENT**

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

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

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

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

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

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

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14

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

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

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

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

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

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

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

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

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

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

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

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

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

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15

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

### **§ 3.13 USE OF SITE**

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

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

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

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

### **§ 3.16 ACCESS TO WORK**

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

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

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

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### **§ 3.18 INDEMNIFICATION**

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

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

### **ARTICLE 4 ARCHITECT**

#### **§ 4.1 GENERAL**

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

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

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

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

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

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

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

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17

#### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

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

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

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

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

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

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

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

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

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

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

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18

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

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

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

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

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

### § 5.3 SUBCONTRACTUAL RELATIONS

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

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19

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **§ 6.2 MUTUAL RESPONSIBILITY**

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

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

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20

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

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

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

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

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

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

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

### **§ 7.1 GENERAL**

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

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

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

### **§ 7.2 CHANGE ORDERS**

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

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

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

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

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

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

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

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21

4 As provided in Section 7.3.7.

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

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

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

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

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

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

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

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

#### **§ 7.4 MINOR CHANGES IN THE WORK**

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

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22

## **ARTICLE 8 TIME**

### **§ 8.1 DEFINITIONS**

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

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

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

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

### **§ 8.2 PROGRESS AND COMPLETION**

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

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

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

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

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

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

### **§ 9.2 SCHEDULE OF VALUES**

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

### **§ 9.3 APPLICATIONS FOR PAYMENT**

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

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23

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

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

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

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

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

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

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

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

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

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24

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

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

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

### § 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

### § 9.7 FAILURE OF PAYMENT

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

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

#### **§ 9.8 SUBSTANTIAL COMPLETION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

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

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

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27

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.1.8.

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

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

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

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

#### § 10.3 HAZARDOUS MATERIALS

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

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

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28

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

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

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

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

#### **§ 10.4 EMERGENCIES**

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

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

#### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

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

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

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

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

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

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

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

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

## **§ 11.3 PROPERTY INSURANCE**

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

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

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

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

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

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

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30

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

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

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

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

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

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

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

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

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

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

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

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

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31

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

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

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

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

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

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

#### **§ 12.1 UNCOVERING OF WORK**

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

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### **§ 12.2 CORRECTION OF WORK**

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

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

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

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

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

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

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

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

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

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

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

### § 13.2 SUCCESSORS AND ASSIGNS

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

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

### § 13.3 WRITTEN NOTICE

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

### § 13.4 RIGHTS AND REMEDIES

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

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

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### **§ 13.5 TESTS AND INSPECTIONS**

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

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

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

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

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

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

### **§ 13.6 INTEREST**

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

### **§ 13.7 TIME LIMITS ON CLAIMS**

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

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

### **§ 14.1 TERMINATION BY THE CONTRACTOR**

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

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

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

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

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

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

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

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

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

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

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

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

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

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 CLAIMS

##### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

##### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

##### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

##### § 15.1.4 CLAIMS FOR ADDITIONAL COST

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

##### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

### § 15.2 INITIAL DECISION

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

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

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

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

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

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

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

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37

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

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

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

### § 15.4 ARBITRATION

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

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

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

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

### § 15.4.4 CONSOLIDATION OR JOINDER

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

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

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38

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

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

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## **Additions and Deletions Report for AIA® Document A201® – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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### **PAGE 1**

17007-3 Morristown Community Center  
4355 Durham Landing  
Morristown, TN 37813

...

City of Morristown  
100 West First North Street  
Morristown, TN 37814

...

Sean Guth, Lose Design dba Lose & Associates, LLC  
2809 Foster Ave  
Nashville, TN 37210

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:50:06 ET on 11/22/2020 under Order No. 7333682125 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)

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The following supplements modify, change, delete from or add to the General Conditions of the Contract for Construction, AIA Document A201, 2017 Edition. Where any article of the General Conditions is modified or any paragraph or clause thereof is modified or deleted by these supplements, the unaltered provisions of that article, paragraph, subparagraph, or clause shall remain in effect.

**ARTICLE 1: GENERAL PROVISIONS**

1.1.9 Other definitions.

- 1.1.9.1 The term "product" as used in these Supplementary Conditions includes materials, systems and equipment.
- 1.1.9.2 The term "or equal" as used in these Supplementary Conditions means "or an equal approved by the Architect."
- 1.1.9.3 The term "provide" as used in these Supplementary Conditions means "furnish and install."
- 1.1.9.4 Wherever technical standards, such as (but not limited to) ASTM, are referenced in the specifications, it shall mean the standards current on the date the Contract Agreement is finalized, unless otherwise noted.

**ADD THE FOLLOWING PARAGRAPH 1.2.4**

- 1.2.4 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:
- 1. The Agreement.
  - 2. Addenda, with those of later date having precedence over those of earlier date.
  - 3. The Supplementary Conditions.
  - 4. The General Conditions of the Contract for Construction.
  - 5. Drawings and Specifications.

In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

**ARTICLE 2: OWNER**

**ADD THE FOLLOWING PARAGRAPH 2.2.5**

- 2.2.5 The Contractor shall be supplied with one (1) copy of technical specifications and construction documents for execution of work. Additional hardcopies will be obtained at the Contractor's expense.

ARTICLE 3: CONTRACTOR

ADD THE FOLLOWING PARAGRAPHS 3.3.4, 3.3.5, 3.3.6

- 3.3.4 The Contractor shall establish and maintain reference points required for the work. The Contractor shall set batter boards for establishing corners and other key points. The Contractor shall lay out on forms or rough floor the exact locations of partitions, openings, etc., as a guide to all trades. The Contractor shall verify grades, lines, levels, and dimensions indicated on the drawings before commencing work.
- 3.3.5 Lay out construction lines and verify grades. If discrepancies between actual lines and elevations and those indicated on plans exist, the Contractor shall notify the Architect and obtain a decision before starting work.
- 3.3.6 The Contractor shall have the subcontractor who installs them, correct defects in bases, surfaces or substrates on which finishing materials are to be applied, construction is to be added, or equipment is to be mounted.

ADD THE FOLLOWING PARAGRAPHS 3.4.4, 3.4.5 AND 3.4.6

- 3.4.4 After the Contract has been executed, the Owner will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in this paragraph. Where materials, equipment, apparatus, or other products are specified by manufacturer, brand name, type or catalog number, such designation shall establish standards of quality and style desired. Any reasonable request for substitution will be considered, if in the opinion of the Architect, such materials are equal to the material specified and entirely satisfactory for use in the project. The Architect shall be the sole judge of acceptability of substitution.
- 3.4.5 By making requests for substitutions based on Clause 3.4.4 above, the Contractor:
- a. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
  - b. Represents that he will provide the same warranty for the substitution that the Contractor would for that specified;
  - c. Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes the Architect's re-design costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
  - d. Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

- 3.4.6 The Architect will reply in writing to the Contractor stating whether the Owner, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner to reply will constitute notice of non-acceptance. Written acceptance of substitution will not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must comply with such requirements. Any adjustment in contract price will be accurately reflected in the required AIA Document G701 Change Order.

ADD THE FOLLOWING TO PARAGRAPH 3.12.5:

- 3.12.5 Add the following sentence:
- a. Submittals shall be transmitted to the Architect electronically, when feasible. When digital transmission is not possible, the Contractor shall submit no less than three (3) copies of product samples and no less than four (4) copies of shop drawings, product data, brochures or similar submittals.

ADD THE FOLLOWING PARAGRAPH 3.12.11:

- 3.12.11 The Owner and/or Owner's Representative shall not be responsible for correctness of dimensions for design as outlined in 3.12.10.

#### ARTICLE 4: ADMINISTRATION OF THE CONTRACT

ADD THE FOLLOWING TO PARAGRAPH 4.1.1

- 4.1.1 Add the following sentence at the beginning of the paragraph:

The term "Architect" shall be understood to refer to the Principal Designer as listed on the individual drawings and throughout these Contract Documents.

CHANGE PARAGRAPH 5.2.1 AS FOLLOWS

DELETE THE LAST SENTENCE FROM PARAGRAPH 5.2.1 AND ADD THE FOLLOWING CLAUSE:

- 5.2.1 No work shall be commenced until approval of such Subcontractors has been given in writing by the Owner. If required, the Contractor shall furnish evidence satisfactory to the Owner, showing that any or all proposed Subcontractors are competent to execute the various parts of the work covered by their Subcontractors.

ARTICLE 7: CHANGES IN THE WORK

CHANGE PARAGRAPH 7.3.4 AS FOLLOWS

- 7.3.4 In the first sentence, delete the words "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" and substitute "an allowance for overhead and profit in accordance with paragraphs 7.3.11 below."

ADD THE FOLLOWING PARAGRAPH 7.3.11:

- 7.3.11 The allowance for the combined overhead and profit, included in the total cost to the Owner, shall be based on the following schedule:
- .1 For each Contractor, for Work performed by the Contractor's own forces, 10 percent of the cost.
  - .2 For the Contractor, for work performed by the Contractor's Subcontractor, 5 percent of the amount due the Subcontractor.
  - .3 For each Subcontractor or Sub-Subcontractor involved, for Work performed by the Subcontractor's or Sub-Subcontractor's own forces, 10 percent of the cost.
  - .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractors, 5 percent of the amount due the Sub-Subcontractor.
  - .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.8.
  - .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

ARTICLE 8: TIME

ADD THE FOLLOWING PARAGRAPH 8.3.4

- 8.3.4 Extended overhead profit or damages relating to weather delays will not be allowed. If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner, the amount specified on the Bid Form, not as a penalty, but as liquidated damages.

ARTICLE 9: PAYMENTS AND COMPLETION

ADD THE FOLLOWING PARAGRAPHS 9.3.1.3, 9.3.1.4 AND 9.3.2.1

- 9.3.1.3            Until the work is substantially complete, the Owner will retain five percent (5%) of the amount due the Contractor on the project. At the Owner's option, retainage may be reduced to two and one half percent (2.5%) when the project is seventy-five percent (75%) complete.
- 9.3.1.4            Concurrent with the Application for Payment, the Contractor shall submit relevant project documentation, including, but not limited to, updated project schedule, site-specific weather data for the period of time indicated on the Application for Payment, invoices for stored materials and deposits paid by the Contractor for material orders, and other deliverables as required by the Owner or the Architect.
- 9.3.2.1            Partial payments will be made monthly on valuation of work done and acceptable materials suitably stored on the site. In the event that the supervising Architect refuses to certify the project as completed at such time as 100% of all of the contract draws have been extended, minus this retainage, then, in that event the Contractor agrees that the Owner may use said retainage to complete the project in accordance with the original contract terms and specifications, with it being clearly understood between the parties that the payment of the retainage account on said contract completion shall in no ways or event release the Contractor from any further liability or obligation to complete the Contract as specified therein.

CHANGE PARAGRAPH 9.4.1 AS FOLLOWS

- 9.4.1            Replace the word “seven” with “within a reasonable amount of time” in the first sentence.

ADD THE FOLLOWING TO PARAGRAPH 9.5.1

- .8            If any claim or lien is made or filed with or against the Owner, the Project or the Premises by any person claiming that the Contractor or any Subcontractor or other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the work, or if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Contractor, or if the Contractor or any Subcontractor or other person under it causes damages to the Work or to any other work on the Project, or if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Architect shall withhold certification, and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Architect shall deem sufficient to (1)

satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorneys' fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes. If such amount is insufficient therefore, the Contractor shall be liable for the difference and pay the same to the Owner.

- .9 Failure of the Contractor to submit relevant project documentation as described in Section 9.3.1.4.

**ADD THE FOLLOWING PARAGRAPH 9.6.9**

- 9.6.9 Notwithstanding any other provisions to the contrary, the Owner reserves the right to make payment directly to any Subcontractor of the Contractor (or jointly to the Contractor and Subcontractor) in such amounts as the Owner determines to protect the Owner's interest and the Owner's property from a lien or asserted lien or other claim, and the amount owed the Contractor shall be reduced by the amount of any claim, and the amount owed the Contractor shall be reduced by the amount of any such payment by the Owner. Exercise of this option shall not create any claims or rights by any Subcontractor or other party against the Owner or the Owner's funds. This right may also be exercised through the Owner's title company making such payments.

**ADD THE FOLLOWING TO PARAGRAPH 9.8.1**

- 9.8.1 ...and when all required occupancy permits have been issued such as but not limited to State Fire Marshall Occupancy Permits, Local Building Occupancy Permits, State Health Agency Occupancy Permit, Local Health Department Permits, and copies of same have been delivered to the Owner.

**ADD THE FOLLOWING TO PARAGRAPH 9.8.2**

- 9.8.2 The Architect will make only one (1) such inspection to determine Substantial Completion. If this inspection determines that the work is not substantially complete, either because of major items not completed or an excessive number of punch list items, successive inspections requested by the Contractor shall be charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

**ADD THE FOLLOWING TO PARAGRAPH 9.10.1**

- 9.10.1 The Architect will make only one (1) such inspection to determine Final Completion. If this inspection determines that the work is not finally complete, successive inspections requested by the Contractor shall be

charged to the Contractor at a rate of \$500.00 per person per day plus expenses.

ADD THE FOLLOWING PARAGRAPH 9.10.2.1

- 9.10.2.1 Releases of liens shall be furnished by the Contractor on AIA Document G706 or a form approved by the Architect. Subcontractors and materials suppliers lien releases may be provided by the Contractor.

ADD THE FOLLOWING PARAGRAPHS 9.11 TO 9.11.1

- 9.11 Liquidated Damages.
- 9.11.1 The Contractor and the Owner recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 9.8 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay to the Owner an amount of One Thousand dollars (\$1,000.00) for each calendar day that expires after the time specified.

ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY

ADD THE FOLLOWING PARAGRAPHS 10.2.9, 10.2.10, 10.2.11 AND 10.2.12:

- 10.2.9 The Contractor shall protect excavation, trenches, buildings and grounds from water damage of any sort. Furnish necessary equipment to provide this protection during the life of the contract. Construct and maintain necessary temporary drainage to keep excavations free of water.
- 10.2.10 The Contractor shall provide protection for the work against wind, storms, cold or heat. At the end of each day's work, cover new work likely to be damaged. If low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect.
- 10.2.11 The Contractor shall provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.
- 10.2.12 The Contractor shall protect, maintain and restore any bench marks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers

reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

ARTICLE 11: INSURANCE AND BONDS

ADD THE FOLLOWING TO PARAGRAPH 11.1.2

- .1 The Contractor shall furnish to the Owner and keep in force during the term of the Contract performance and labor and material payment bonds guaranteeing that the Contractor will perform its obligations under the Contract and will pay for all labor and material furnished for the work. Such bonds shall be issued in a form and by a surety reasonably acceptable to Owner, shall be submitted to Owner for approval as to form, shall name the Owner and its leader as obliges and shall be in an amount equal to at least 100% of the Contract Sum (as the same may be adjusted from time to time pursuant to the Contract). The Contractor shall deliver the executed, approved bonds to the Owner within three (3) days after execution of this Agreement."
- .2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.
- .3 The bonding company shall furnish a letter to the Owner from the home office acknowledging the bond(s). Separate bonds are required.  
  
The costs of all bonds furnished hereunder shall be included in the Contract Sum.
- .4 The Owner shall have the right to waive any bonds required to be provided hereunder, in which event the amount of the premium of any such waived bond shall be deducted from the Contract Sum by appropriate Change Order.

ADD THE FOLLOWING TO PARAGRAPH 11.1

- .5 The General Liability coverages provided by the Contractor is primary over any coverages of the Owner.
- .6 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:

Premises-Operations (including X-C-U)  
Independent Contractor's Protective  
Products and Completed Operations  
Personal Injury Liability with Employment  
Exclusion deleted  
Contractual - including specified provisions for the  
Contractor's obligations under Paragraph 3.18  
Owned, non-owned, and hired motor vehicles

Broad Form Property Damage including Completed

Operation

Umbrella Excess Liability

*All insurance policies shall be written on an occurrence basis.*

- .7 If the General Liability coverages are provided by a Commercial General Liability Policy on a claim-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with paragraph 9.10.2.
- .8 Contractor acknowledges that all records relating to this Agreement and the Services to be provided under the contract may be a public record subject to Georgia's Open Records Act (O.C.G.A. §50-18-70, et. Seq.). Contractor shall cooperate fully in responding to such request and making all records, not exempt, available for inspection and copying as provided by law.
- .9 The Insurance required by paragraph 11.1.1 shall be written for not less than the following, or greater, if required by law:
  1. Worker's Compensation:
    - a. State: Statutory Limit
    - b. Applicable Federal: Statutory Limit
    - c. Employer's Liability: \$1,000,000  
without restriction as to whether covered by worker's compensation law.
  2. Comprehensive General Liability (including Premises-Operations; Independent Contractor's Protective; Products and Completed Operations: Broad Form Property Damage):
    - a. Bodily Injury:  
\$1,000,000 Each Occurrence  
\$1,000,000 Annual Aggregate
    - b. Property Damage:  
\$1,000,000 Each Occurrence  
\$1,000,000 Annual Aggregate
    - c. Maintain Products and Completed Operations.  
Insurance for a period of two years after final payment.
    - d. Property Damage Liability Insurance will include X, C and U (explosion, collapse and underground) coverage.
  3. Contractual Liability (Hold Harmless Coverage):
    - a. Bodily Injury:  
\$1,000,000 Each Occurrence  
\$1,000,000 Annual Aggregate
  4. Personal Injury, with Employment Exclusion detailed:

- a. \$1,000,000 Annual Aggregate
- 5. Comprehensive Automobile Liability (owned, non-owned, hired):
  - a. Bodily Injury:
    - \$1,000,000 Each Person
    - \$1,000,000 Each Occurrence
  - b. Property Damage:
    - \$1,000,000 Each Occurrence
- 6. Excess Limits Liability Policy (Umbrella):
  - a. \$1,000,000
- 7. The following shall be included as additional insured parties on Contractor's liability policies:
  - a. **City of Morristown** – Owner
  - b. Lose Design – Architect
- .10 Each policy shall provide either in the body of the policy or by appropriate endorsement (rider) to the policy, that such policy cannot be altered or canceled in less than ten days after the mailing of written registered notice to the Owner of such alternation or cancellation, or not less than five days after actual receipt by the Owner of such written notice.
- .11 If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.
- .12 Furnish one copy of each Certificate of Insurance herein required for each copy of the Agreement which shall specifically set forth evidence of all coverage required by the Contract. The form of the certificate shall be AIA Document G705 or a form approved by the Architect. Furnish to the Owner copies of endorsements that are subsequently issued amending coverage or limits.

DELETE PARAGRAPHS 11.2.1, 11.2.2 and 11.2.3 AND SUBSTITUTE THE FOLLOWING

- 11.2.1 The Contractor shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract.
- 11.2.2 Contractor shall purchase and maintain insurance in not less than the following amounts:

- .1 Worker's Compensation, as required by the Labor Laws in effect at the place where project is performed.

Employer's Liability:

\$500,000.00 per Accident  
\$500,000.00 Disease, Policy limit  
\$500,000.00 Disease, Each Employee

- .2 Comprehensive or Commercial General Liability (including Premises Operations; Independent Contractors Protective; Products and Completed Operations; Broad Form Property Damage):
- .3 Comprehensive General Liability in the amount of not less than \$1,000,000.00 single limit bodily injury and broad form property damage, products and completed operations. If any blasting is undertaken, provide and include certificate of blanket XCU coverage before blasting.
- .4 Limits for protection required for Contractual Liability shall be the same as specified for Comprehensive General Liability.
- .5 If the General Liability coverages are provided by a Commercial Liability policy, the:
- a. General Aggregate shall be not less than \$2,000,000 and it shall apply, in total to this Project only.
  - b. Fire Damage Limit shall not be less than \$1,000,000 on any one Fire.
  - c. Medical Expenses Limit shall be not less than \$5,000 on any one person.
- .6 Business Automobile Liability (including owned, non-owned and hired vehicles): \$1,000,000 Combined Single limit.

- .7 Umbrella Excess Liability:

\$1,000,000 over primary insurance

\$25,000 retention

- .8 The Owner shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Contract. (BUILDERS RISK INSURANCE).

The Owner will provide the Contractor with Certificate of insurance providing a 30 day written notice of change or cancellation of coverage.

ADD THE FOLLOWING TO PARAGRAPH 11.5.1

- .1 If the Owner or Contractor is damaged by the failure of the other to purchase or maintain any insurance or bond required by these Contract Documents, within the written consent of the other, then the party failing

to so purchase or maintain such insurance or bonds shall pay all costs incurred by the other party, including, but not limited to, reasonable attorney's fees.

**ARTICLE 13: MISCELLANEOUS PROVISIONS**

**MODIFY PARAGRAPH 13.4.2 AS FOLLOWS:**

13.4.2 Change the last sentence to read "... shall be at the Contractor's expense."

**ADD THE FOLLOWING PARAGRAPHS 13.6, 13.7 AND 13.8**

**13.6 Hours of Operation**

The Contractor is disallowed from conducting operations which include the erection (including excavation), demolition, alteration or repair of any private property within five hundred (500) feet of an occupied residence, between the hours of 8:00 p.m. and 7:00 a.m. Monday through Friday during the months of September through May; between the hours of 8:00 p.m. and 6 a.m. during the months of June through August; and between 8:00 p.m. and 8 a.m. Saturday and Sunday throughout the year which involves the use of a (i) hammer, or (ii) pneumatic, gas diesel, or electric powered tool or equipment. Notwithstanding the foregoing, nothing in this supplementary condition shall prohibit construction work or operation of construction equipment during periods of natural disaster, storms which necessitate emergency home repairs or removal of trees, emergency utility repairs, or the normal repair of heating or cooling units.

**13.7 Pre-Blast Survey**

In the event that the Contractor must perform any blasting during construction operations, the Contractor shall be responsible for conducting his own pre-blast survey at no cost to the Owner.

**13.8 Utility Service**

The Contractor shall provide and maintain at his own expense any water, electric, or other utility service used in the construction of the work.

**ARTICLE 14: TERMINATION OR SUSPENSION OF THE CONTRACT**

**DELETE PARAGRAPH 14.2.1 AND SUBSTITUTE THE FOLLOWING**

14.2.1 The Owner may terminate this Contract at any time, with or without cause, by a notice in writing from the Owner to the Contractor. If the Contract is terminated by the Owner as provided herein, the Contractor will be paid an amount for services performed to date.

**DELETE PARAGRAPH 14.4.3 AND SUBSTITUTE THE FOLLOWING**

- 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment from the Owner on the same basis provided in Section 14.2.

ADD THE FOLLOWING TO PARAGRAPH 15.1.6.2

- .1 The following bad weather days shall be anticipated and included in the contractual time period given for project completion. The Contractor's request for additional time due to weather shall only be considered for days beyond those listed below and may be denied or granted for such reasonable time as the architect may, at his/her sole discretion, determine. The burden of proof and documentation for such request for additional time shall rest solely upon the Contractor. Rain days will not be granted for Saturdays and Sundays.

January	12 days	February	11 days
March	8 days	April	7 days
May	7 days	June	6 days
July	7 days	August	5 days
September	4 days	October	5 days
November	6 days	December	11 days

- .2 Extended overhead profit or damages relating to weather delays will not be allowed. If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner, the amount specified on the Bid Form, not as a penalty, but as liquidated damages.
- .3 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specification wherein a definite portion and certain length of time is fixed for the performance of any act wheresoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be the essence of this Contract.

ADD THE FOLLOWING PARAGRAPH 15.1.6.3

- 15.1.6.3 Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed

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December 1, 2020

Anthony W. Cox  
City Administrator  
City of Morristown  
100 West First North Street  
Morristown, Tennessee 37814

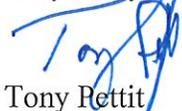
Subject: Morristown Community Center-Recommendation of Award of Construction Materials Testing.

Dear Mr. Cox:

Please accept this recommendation to Morristown City Council to award the Construction Materials Testing for the above subject project. BurWil recommends awarding the Construction Materials Testing for soil tests and monitoring earthwork procedures, to GEOServices, LLC, Geotechnical and Materials Engineers, (GEOS) based on their proposal dated December 1, 2020.

If you require any further information or have questions regarding the information contained herein, do not hesitate to contact this writer.

Very Truly Yours,



Tony Pettit  
Manager of Knoxville Operations  
Mobile: 865.776.3836  
[tpettit@burwil.com](mailto:tpettit@burwil.com)

CC: Joey Barnard – City of Morristown  
Sean Lose – Lose Design  
Michael Black – Lose Design



December 1, 2020

City of Morristown  
100 W. 1<sup>st</sup> North Street  
Morristown, Tennessee 37814

Attention: Mr. Joey Barnard, Assistant City Administrator  
[jbarnard@mymorristown.com](mailto:jbarnard@mymorristown.com)

Reference: **Proposal for Construction Materials Testing Services**  
**Morristown Community Center – Site Development**  
Knoxville, Tennessee  
GEOservices Proposal No. 12-20123

Dear Mr. Barnard:

GEOservices appreciates the opportunity to submit this proposal for the above referenced project. The following proposal describes our understanding of the project, outlines our anticipated scope of work and presents the associated fees for our services. We understand a purchase order will be issued by the City of Morristown to authorize our services.

#### **PROJECT INFORMATION**

It is proposed to develop a site located generally west of Merchants Green Boulevard in Morristown, Tennessee for the new Morristown Community Center. The provided drawings indicate the proposed facility will include a new community center building which will house a pool, gymnasium, locker rooms, and various multipurpose and activity rooms. The building has overall plan dimensions of approximately 450 by 200 feet. Paved parking areas and access drives are also proposed.

The proposed building will be of steel-frame and concrete masonry unit wall construction. The buildings will be supported using a system of conventional shallow foundations and a concrete slab-on-grade. You have requested that GEOservices provide construction materials testing and inspection services for site development.

## SCOPE OF SERVICES

Based on our understanding of the proposed construction, GEOServices proposes to offer the following services as part of this proposal:

**Laboratory Testing:** Our personnel can obtain representative samples from the onsite/offsite borrow for laboratory Proctor testing to determine the materials maximum dry density and optimum moisture content. In addition, Atterberg limits and natural moisture content testing may be performed.

**Proofrolling Observations:** Our personnel can be onsite as requested to observe proofrolling. The purpose of our observations is to assist the contractor in determining the suitability of soils for fill placement. During proofrolling observations, our personnel can help identify areas which pump, rut, or deflect under passage of construction equipment. If necessary, recommendations will be provided for areas judged unsuitable during proofrolling.

**Field Density Testing:** Our personnel can be onsite during fill placement operations. Our personnel will record lift thickness, moisture content, compacted density, approximate location and approximate depth to proposed subgrade elevation. Please be aware that periodic, part-time density testing will represent the compaction and moisture content at the tested depths and locations only.

**Reporting:** At the completion of each site visit, our personnel will prepare a daily field report. This report will summarize our field personnel's preliminary observations and testing results. The field personnel's information will be delivered to our office, reviewed by a GEOServices project manager, and issued in a typed format.

## LABORATORY ACCREDITATION

GEOServices participates and maintains AASHTO Accreditation through the AMRL and CCRL certification programs. This accreditation confirms our laboratory meets or exceeds the requirements outlined in ASTM E329 for materials testing and inspection laboratories. Confirmation of our accreditation is shown on the AMRL website at <http://www.amrl.net>.

## EXCLUSIONS

The following items are specifically excluded from our scope of services:

1. Surveying of test locations and elevations.
2. Providing a curing environment for the initial 24 to 48 hours for the concrete cylinders.
3. Directing the means and methods of the project subcontractors.

4. Items not discussed above.
5. Construction Management.
6. Civil/Architectural design services.

## **CLIENT RESPONSIBILITIES**

We request that you provide the following information to GEOServices:

1. Please forward a copy of the project plans and specifications to GEOServices prior to construction.
2. Provide us with the name of the individual who will be responsible for scheduling and directing our services. Provide, or instruct your appointed representative to provide a minimum 24-hour notice for our services. When performing these services on an on-call basis, GEOServices will not be responsible for services performed without our presence.
3. Provide us with all applicable names for report distribution.

## **FEES**

GEOServices proposes to perform the scope of services discussed above on a unit rate basis with a no to exceed budget of \$25,000. The actual cost of our services will be dependent on the construction schedule, the number of trips requested and the number of units performed in accordance with the attached fee schedule. With each invoice, we can update you with services provided for that invoice, as well as the total fees to date. Our actual fees will be dependent on services performed.

Since GEOServices will be on-site only when requested by your appointed representative, your project superintendent will have ultimate control over the project efficiency and cost of the materials testing services.

## **AUTHORIZATION**

We understand the City of Morristown will issue a professional services agreement/purchase order to authorize our services. Please forward via email to W. Ros Kingery III, P.E. at [rkingery@geoservicesllc.com](mailto:rkingery@geoservicesllc.com) or to our office located at 2561 Willow Point Way, Knoxville, Tennessee 37934.

**CLOSURE**

GEOServices looks forward to working with you on this project. If you have any questions or require additional information, please feel free to call us.

Sincerely,

**GEOServices, LLC**



W. Ros Kingery III, P.E.  
Vice President

Attachments: Fee Schedule

## FEE SCHEDULE

### A. PERSONNEL

1. Engineering Technician, *per hour .....	\$ 50.00
2. Senior Engineering Technician, *per hour .....	\$ 65.00
3. Metals Technician, per hour .....	\$ 95.00
4. Staff Professional, per hour .....	\$ 90.00
5. Registered Engineer, per hour .....	\$ 120.00
6. Senior Registered Engineer, per hour .....	\$ 150.00
7. Trip Charge, per round trip .....	\$ 25.00
8. Drafting Services, per hour .....	\$ 65.00
9. Secretarial Services, per hour .....	\$ 45.00

### B. LABORATORY

1. Moisture Content, each .....	\$ 10.00
2. Atterberg Limits, each .....	\$ 75.00
3. Proctor Compaction Test:	
a.) Standard Methods, each .....	\$ 150.00
4. Stone Proctor Compaction Test – Standard, each .....	\$ 200.00
5. Concrete Cylinder Compression Test, per cylinder cast .....	\$ 15.00
6. Masonry Mortar and Grout Testing, per sample cast .....	\$ 20.00
7. Asphalt Core Thickness and Unit Weight, per core .....	\$ 50.00

Note: Additional project specific tests will be priced upon request

### C. SPECIAL EQUIPMENT CHARGES

1. Nuclear Gauge, per site visit .....	\$ 50.00
2. Floor Profilometer, per day .....	\$ 250.00
3. Asphalt Coring Machine, per day .....	\$ 250.00
4. Rental Equipment/Subcontracts .....	Cost + 15%

\*Overtime - Time over 8 hours per day, plus Saturdays, Sundays, and Holidays will be billed at 1.5 times the regular rate.

Notes:

All personnel time is portal to portal.  
 Engineering Technician, Minimum 4 hours per visit.



December 1, 2020

Mr. Joey Barnard  
Assistant City Administrator  
City of Morristown  
100 West First North Street  
Morristown, TN 37814

**Contract Amendment No. 2**  
**Between City of Morristown & Lose & Associates, Inc. DBA Lose Design**  
**Morristown Community Center**  
**Contract Dated June 26, 2018**  
**Lose & Associates Job Number 17007-3**

This letter shall serve as contract Amendment No. 2 for the City of Morristown Community Center design services. Contract Amendment No. 2 will cover the following services:

1. Construction Admin and Close-Out Services as noted in Attachment A.

**Fees: Amendment No. 2**

Understanding the value that BurWil as Program Manager will bring to this project, we estimated the man-hours necessary to provide the services outlined in Attachment A and we can provide these services at a reduced amount, **not to exceed \$350,000.00 based on the project scope as designed in the Bid/ Permit Documents.**

We feel the value of having the Architect of Record working with the Program Manager for the duration of construction will add tremendous value to the success of this amazing project and we look forward to continuing our relationship with the great City of Morristown.

Terms and Conditions outlined in the original contract dated June 26, 2018 will govern the work included in Amendment.

ACCEPTED: This \_\_\_ day of \_\_\_\_\_, 2020 ISSUED: **December 1<sup>st</sup>, 2020**

\_\_\_\_\_  
Client's signature

\_\_\_\_\_  
Print Name

Chris Camp, ASLA  
President

\_\_\_\_\_  
Title

**NASHVILLE | 2809 FOSTER AVENUE NASHVILLE, TN 37210 | 615.242.0040**  
**ATLANTA | 220 W CROGAN ST, SUITE 100 LAWRENCEVILLE, GA 300646 | 770.338.0017**  
**KNOXVILLE | 9724 KINGSTON PIKE, SUITE 1404 KNOXVILLE, TN 37922 | 865-409-1424**

## UNDERSTANDING

The City of Morristown requires professional design services to develop a new Community Center. The community center will include indoor aquatic elements, a gymnasium, fitness facilities, multi-purpose programming rooms, climbing elements, indoor walking track, community events space, a caterer's kitchen and supporting administrative spaces and locker rooms as outlined in Morristown Recreation Center program report dated January 2017 and updated drawings presented to City Council on May 23, 2019. As part of the scope the design consultant will develop architectural, aquatic, civil engineering and landscape plans required to obtain building permits and bid the project. This project will be developed as a design, bid and build project following the purchasing requirements of the City of Morristown. The community center will be developed on a site adjacent to the new public works compound and proposed park.

## APPROACH

The following methodology is one that we have found to be most efficient in the delivery of design services. It provides a strong framework to meet client expectations and establishes delivery goals for our design team. As with all of our projects, we will happily tailor any portion of our process to meet the unique needs of each of our clients, if desired.

### INITIAL PLANNING

#### **TASK 1. (Complete)**

To initiate the planning for the project will be to review previous building site needs studies and geotechnical reports developed by the city. This will be followed by a meeting with city staff to go over the proposed building and site development needs for the near term as well as long term for the community center. Following this meeting the design team will begin development of design alternatives.

Lose & Associates team members will meet with community planning and zoning staff to coordinate plan concepts. Concurrently, we will consult with requisite agencies regarding regulatory issues that may impact the plan and eventual construction.

#### **Conceptual Plan (Complete)**

A conceptual plan for the building will be developed based on the approved master plan concept plan that was developed along with the feasibility study. We will meet with city staff to review the master plan concept and refine the program for the building. As part of this meeting we will have our aquatic consultant attend the meeting and develop a more detailed scope for all pool components. Comments will be recorded and used to make adjustments to the original master plan floor plan and several pool options will be developed. The building and site plan will be updated to reflect the new program, and a follow up meeting will be held with city staff. Comments will be recorded and used to advance the plans to construction drawings.

## **TASK 2 CONSTRUCTION DRAWING PROCESS: DESIGN, ENGINEERING, PERMITTING, CONSTRUCTION ADMINISTRATION FOR THE COMMUNITY CENTER SUPPORTING SITE IMPROVEMENTS (Complete)**

### **Schematic Design:**

Schematic plans will then be developed to a 50% level and plan submittals made for buildings, pools, road, parking, grading, layout, utilities, details, etc. During this process, we will continue to coordinate with City permitting staff to expedite the permitting of the construction documents. Along with the preliminary plans, we will develop a preliminary 50% opinion of probable cost. We will also prepare a preliminary list of project drawings and specification sections anticipated for the final package. As the plans are completed, we will hold a review meeting with the Client team.

### **Construction Documents:**

**90% Construction Document Preparation:** Immediately following the receipt of the schematic review comments, recommended changes will be made, and preparation of the 90% Construction Documents will begin. We will continue coordination with requisite permitting agencies to develop permit submittal packages as soon as possible to expedite permitting. The plans and updated opinions of probable cost will be presented to the Client team for a 90% review meeting.

**Preparation of Final 100% Construction Plans:** Using the comments provided by the Client team and management, the design team will complete the construction plans for the project. The plans will be developed to a 100% level and submitted to the Client team, local permit offices, and state permit officials (if needed) for review and approval. Comments received from permit officials will be forwarded to the Client team along with the recommended remedial action proposed by the design team. Plans will then be modified to reflect codes comments and recreation staff comments and will be resubmitted to the codes officials for approval. Concurrent with the building plans being approved, pool plans will be permitted through the health department. Upon receipt of approved plans from codes officials and the health department, bid drawings, along with a bid specification manual, will be prepared for the project and the project will be ready for bidding when desired by the City.

**Bidding Services:** Bid drawings, along with a bid specification manual, will be prepared for the project. We will update our opinions of probably cost to reflect the changes that occurred during permitting for comparison when bids are opened. During the bid process, we will distribute bid documents and attend and facilitate a pre-bid meeting for the prospective contractors. We will respond to contractor questions and issue clarifications and addenda as necessary. We will assist the client in analyzing contractor bids and in the contract award.

### **TASK 3 CONSTRUCTION ADMINISTRATION AND CLOSE-OUT SERVICES (Amendment #2)**

Construction Administration & Project Close-out Services shall be provided during the anticipated sixteen-month construction period (485 calendar days). The Construction Administration services are comprised of the following:

#### **Construction Administration:**

##### **Pre-Construction Meeting**

*Lose will attend and participate in a Program Manager led Pre-Construction meeting with the Owner, Program Manager, and General Contractor.*

##### **Owner-Architect-Contractor (OAC) Progress Meetings**

*Lose will attend and participate in a Program Manager led OAC meeting held monthly over the anticipated sixteen-month construction period.*

##### **Client Progress Presentations**

*Lose will present up to three progress briefings to the Client over the anticipated sixteen-month construction period. The presentations will be provided in person with a digital slide show for supporting, visual information.*

##### **Site Observations**

*Lose will observe site conditions and document findings in conjunction with the OAC progress meetings.*

##### **Shop Drawing & Submittal Review & Responses**

*Lose will review and respond to shop drawing submittals that comply to the construction documents. Lose will coordinate shop drawing review and responses with mechanical, electrical, aquatic, and structural consulting engineers that comply to the construction documents.*

##### **Review and Response to Requests for Information (RFI's)**

*Lose will review and respond to RFI's that are relevant to the project contract documents.*

##### **Construction Change Order Reviews**

*Lose will review change order requests and provide the owner with a recommendation.*

##### **Payment Application Review**

*Lose will review payment applications in conjunction with the monthly OAC progress meetings.*

#### **Close-Out Services:**

##### **Substantial Completion Review**

*Lose will provide a substantial completion review of the project, upon the request of the contractor. Lose will provide a report of the substantial completion review findings in the form of a punch list.*

##### **Final Completion Review**

*Lose will provide a final completion review of the project, upon punch list completion, at the request of the contractor.*

##### **Operations & Maintenance (O&M) Manuals & Warranty Review**

*Lose will review contractor provided O & M manuals and warranties as required by the contract documents.*

# PROJECT FEES

Project fees are provided below for each of the items outlined in the scope of services.

<u>Item</u>	<u>Fee</u>
TASK 1. Community Center and Aquatics Facility Programming and Concept Plan	Complete
TASK 2. Community Center and Aquatics Facility Construction Document (Complete Schematic to 50% level, 90& 100% drawing, permitting & bidding. Fee includes cost of aquatic consultant)	5.75 % of Construction Cost x 75% Less previously billed amount
TASK 3. Construction Administration and Close-out Service	\$350,000.00

Project fees will be invoiced monthly as a percentage of completion. When in-kind labor or donated materials are used in conjunction with a project or should the awarded project bid be below our final opinion of probable cost, the actual construction value for billing will be determined using the current copy of *Means Site and Architectural Cost Estimating* publications.

In addition to the fees quoted for professional services, reimbursable expenses will be charged as outlined on our following rate schedule.

### Reimbursable Expenses

Prints	cost
Postage and Shipping	cost
Mileage and Travel Expenses	cost
Copies	cost

**Should additional services be requested, beyond the scope provided above, we will prepare a separate fee for those services based on the following hourly rate schedule.**

# ATTACHMENT A – Hourly Rates

## LOSE DESIGN

HOURLY RATE SCHEDULE (for use with all hourly agreements and for Additional Services)

### Professional Services Hourly Rate

Principal/President.....	\$240.00
Executive Vice President.....	\$220.00
Vice President.....	\$200.00
Division Director .....	\$185.00
Senior Landscape Architect, Project Manager, Architect, Engineer, and Planner ..	\$150.00
Marketing Director .....	\$135.00
Landscape Architect, Architect, Engineer, Project Manager .....	\$120.00
Certified Planner, Senior Proposal Coordinator, Engineer in Training .....	\$110.00
Land Planner, Intern Architect, BIM Specialist, GIS Specialist, Graphic Designer, Interior Designer .....	\$100.00
Technician .....	\$80.00
Marketing Coordinator, Proposal Coordinator.....	\$80.00
Administrative Assistant.....	\$65.00

### Reimbursable Expenses

Consultants' Services	cost + 10%
Prints	cost + 10%
Long Distance Telephone Charges	cost + 10%
Postage and Shipping	cost + 10%
Mileage and Travel Expenses	cost + 10%
Copies	cost + 10%

January 1, 2021

NOTE: All the above-stated fees and expenses are to be billed monthly, and the invoices are due and payable upon receipt. Other reimbursable expenses not shown hereon will be invoiced at our cost plus 10%. These rates are current until January 1, 2022, at which time they may be adjusted by the Design Professional.



December 1, 2020

Mr. Joey Barnard  
Assistant City Administrator  
City of Morristown  
100 West First North Street  
Morristown, TN 37814

RE: Morristown TN Park Buildings ADA Improvements Construction  
Administration Services  
Lose & Associates Job Number 16236-1

Dear Mr. Barnard,

Lose Design, provider of architecture, landscape architecture, land planning, and civil engineering services, is pleased to offer its professional services for your project in Morristown, Tennessee. Services required include Construction Administration Services for ADA improvements of Park buildings that the City will self-perform construction activities.

If this proposal is acceptable, please provide your authorization on the space provided on the attached signature page and return one signed copy to our office. Once the agreement is received, a fully executed contract will be forwarded for your files.

Sincerely,

LOSE DESIGN

Sean Guth, AIA, NCARB, LEED AP  
Associate Vice President - Architecture

Attachments:

Professional Services Agreement

--Scope of Services/Fees

--Terms and Conditions

--Hourly Rate Schedule

--Signature Page

--Morristown Park Buildings ADA Improvements Drawing Set

## **PROFESSIONAL SERVICES AGREEMENT**

### **SCOPE OF SERVICES/FEES**

***CA Services for Morristown Park Buildings ADA Improvements Multiple Parks  
LPRF Grant***

***Morristown, Tennessee***

#### **Project Description**

Lose Design understands that The City of Morristown, TN (Client) desires to self-perform ADA upgrades to existing restroom buildings. Lose will provide Construction Administration Services as identified below for the Construction Drawing Set identified as "Morristown Park Buildings ADA Improvements Multiple Parks LPRF Grant" Project No. 16236, attached. These services will be provided over a construction period of 90-days.

#### **Task 1 – Construction Administration Services**

This task will consist of the following:

- Coordinate and attendance of Construction Kick-off Meeting
- Two (2) monthly site visits for construction observation and progress documentation
- Submittal review and acceptance
- RFI (Requests for Information) review and response through the course of construction
- Punch list review and documentation
- Final review and documentation

#### **Task 2 –Additional Services**

Only items of work specifically called out under the Scope of Services section of this agreement are to be performed for the specified fees as a part of the contract. The Design Professional will consider any items not so specified as "Additional Services" and will perform those services upon request on an hourly fee basis. Such Additional Services may include, but are not limited to, the following:

- Environmental assessments and/or permits other than those specified in Scope of Services;

- Site visits beyond those required to provide the design services listed in Scope of Services;
- Detailed design services associated with any work designed by others to include but not limited to; structural engineering, geotechnical engineering, electrical engineering, mechanical engineering, surveying or environmental specialists;
- Changes or Modifications to the drawings, specifications, or other documents required by the Client;
- Permitting review and assistance.
- Preparation of marketing materials such as pamphlets, brochures, etc.
- Meetings or negotiations with agencies or utilities other than those specified in Scope of Services.
- Other items requested by the Client or his representative not included elsewhere in this agreement.

**Exclusions**

- Professional Services other than those listed in the above Scope of Services
- Specialized environmental services other than those listed in the above Scope of Services
- Structural Engineering
- Geotechnical Engineering design or inspections
- Traffic Engineering Services
- Surveying Services
- MP&E Services
- Detailed Cost Estimating Services
- Detailed Construction Inspections other than those listed in the above Scope of Services

**Client Responsibilities**

- General Conditions of this Agreement
- Providing Access to the Subject Parcel
- Review/Submittal/Permit Fees
- Surveying Services
- Traffic Engineering
- Geotechnical Engineering & Investigations
- Procurement of additional consultants
- Bidding and contractor selection

**Fees**

The services described herein will be provided on a Lump Sum (LS) or hourly fee basis as follows:

<b><u>Description of Services</u></b>	<b><u>Fee Amount</u></b> <sup>(1)</sup>
1 – Construction Administration Services .....	\$9,750.00
2 – Additional Services .....	Hourly, as needed

**Notes:** \_\_\_\_\_



(1) Expense amounts are **not** included in these fees, and are inclusive of reasonable out-of-pocket expenses incurred on behalf of the client and shall include travel and subsistence, plotting and reproduction, telephone/communications, deliveries, agency fees, and mileage. Expenses shall be billed in accordance with Attachment A.

Remit Payment To:

Lose Design  
Attn: Accounts Receivable  
2809 Foster Avenue  
Nashville, TN 37210

Questions May Be Directed to:

Tammy Boyte  
Controller  
[tboyte@lose.design](mailto:tboyte@lose.design)  
615-767-5811

## TERMS AND CONDITIONS

**Payment Schedule and Terms** – Progress payments for the fees described previously will be due monthly, based on the Design Professional's estimate of the percentage of the work complete. If payment is not received by the Design Professional within 30 calendar days of the invoice date, the Client shall pay as interest an additional charge of 1.5% of the past due amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. Failure to make payments when due shall be cause for suspension of the Design Professional's services, and the filing of a lien against the property.

**Current Hourly Rates** - An attached table, dated January 1, 2021, outlines our current hourly rates and reimbursable expenses. These rates are current until January 1, 2022, at which time they may be adjusted by the Design Professional.

**Additional Services** – Only items of work specifically called out under the Services section of this Agreement are to be performed for the specified Fees. The Design Professional will consider any items not so specified as "Additional Services" and will perform those services upon request on an hourly fee basis as outlined on the attached Hourly Rate Schedule. If any Additional Services are requested, the Design Professional shall be reimbursed for associated out-of-pocket expenses as reflected on the attached Hourly Rate Schedule.

**Term of Proposal** – It is understood that this document outlines proposed Services and Fees to be provided in relation to the Client's project, and that this offer of proposed Services and Fees remains open for sixty (60) days from the date this document is issued. If the Client does not indicate acceptance by signing and returning one copy to the Design Professional within sixty days, this document becomes null and void.

**Fee Adjustment** – It is understood that in the event this project extends over a period of more than one year from the date of this Agreement, the fees for any remaining services will be adjusted proportionately to the "all items" group of the U.S. Department of Labor's Bureau of Labor Statistics Consumer Index.

**Ownership of Documents** – All reports, plans, specifications, computer files, field data, notes and other documents and instruments prepared by the Design Professional as instruments of service shall remain the property of the Design Professional. The Design Professional shall retain all common law, statutory and other reserved rights, including the copyright thereto. Reuse for extensions of the project or for new projects shall require written permission of the Design Professional and further compensation at a rate agreed upon by both parties. Any changes made to the construction documents by the Client, or by the Client's representatives, are strictly prohibited without the knowledge and written consent of the Design Professional. The Design Professional shall be released from any liability resulting from the unauthorized alteration of construction documents. The Design Professional grants the Client the right to use the drawings for their use in publications, public meetings, planning efforts, award submittals and the right to reproduce the drawing as needed for stated uses without requesting authorization from the Design Professional.

**Jobsite Safety** – The Design Professional is not responsible for job site safety during the master planning process. The owner retains sole responsibility and liability associated with securing the site and maintaining job site safety during the planning process.

**Applicable Law** – Unless otherwise provided, this Agreement shall be governed by Tennessee state law.

**Disputes Resolution** - All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or breach thereof shall be presented to non-binding mediation, subject to the parties agreeing to a mediator.

**Termination of Services** – This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party fail to perform substantially in accordance with the terms of this Agreement through no fault of the party initiating termination. If this Agreement is terminated by the Client, the Design Professional shall be paid for services performed to the termination notice date, including reimbursable expenses due plus termination expenses. Termination expenses are defined as reimbursable expenses directly attributable to termination, plus 15 percent of the total compensation earned to the time of termination to account for the Design Professional's rescheduling adjustments, reassignment of personnel, and related costs incurred due to the termination.

**Opinion of Probable Cost** – In providing opinions of probable construction cost, the Client understands that the Design Professional has no control over costs or the price of labor, equipment, or materials, or over the contractor's method of pricing, and that the opinions of probable construction costs provided are to be made on the basis of the Design Professional's qualifications and experience. The Design Professional makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

**Limit of Liability** - In recognition of the relative risks and benefits of the project to both the Client and the Design Professional, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Design Professional and its subconsultants to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the Design Professional and its subconsultants to all those named shall not exceed **\$50,000** or the Design Professional's total fee for services rendered on this project, whichever is greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

In addition, the Client agrees to indemnify and hold the Design Professional harmless for any damage, liability or cost, including reasonable attorney's fees and defense costs, arising from any errors or omissions contained in the plans, specifications or other contract documents prepared by others. The Client agrees to extend any and all liability limitations and indemnifications provided by the Client to the Design Professional to those individuals and entities the Design Professional retains for performance of the services under this Agreement, including but not limited to the Design Professional's subconsultants and their officers, employees, heirs and assigns. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

**Betterment** - If, due to the Design Professional's error, any required item or component of the project is omitted from the Design Professional's construction documents, the Design Professional shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will the Design Professional be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.



## ATTACHMENT A – Hourly Rates

### LOSE DESIGN

HOURLY RATE SCHEDULE (for use with all hourly agreements and for Additional Services)

#### Professional Services Hourly Rate

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Certified Planner, Senior Proposal Coordinator.....	\$110.00
Land Planner, Intern Architect, Engineer in Training, BIM Specialist, GIS Specialist, Graphic Designer, Interior Designer.....	\$100.00
Technician.....	\$80.00
Marketing Coordinator, Proposal Coordinator.....	\$80.00
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Prints	cost + 10%
Long Distance Telephone Charges	cost + 10%
Postage and Shipping	cost + 10%
Mileage and Travel Expenses	cost + 10%
Copies	cost + 10%

January 1, 2021

NOTE: All the above-stated fees and expenses are to be billed monthly, and the invoices are due and payable upon receipt. Other reimbursable expenses not shown hereon will be invoiced at our cost plus 10%. These rates are current until January 1, 2022, at which time they may be adjusted by the Design Professional.



## SIGNATURE PAGE

This is an Agreement made as of December \_\_, 2020 between The City of Morristown (herein called the CLIENT), and Lose & Associates, Inc., dba Lose Design (herein called Lose Design or the DESIGN PROFESSIONAL).

- I. Client and Lose Design, for the mutual considerations hereinafter set forth agree that the services for project number 16236-1, project name Construction Administration Services for Morristown Park Buildings ADA Improvements Multiple Parks LPRF Grant, Morristown, TN, shall conform to the Scope of Services.
- II. Client agrees to pay Lose Design as compensation for its services in accordance with the Fees Section in the proposal. Fees and other charges will be invoiced monthly by Lose Design. The amount of each invoice shall be due at the time of billing.
- III. The person signing this Agreement warrants he has authority to sign as, or on behalf of, the Client. If such person does not have such authority, he agrees that he is personally liable for all breaches of this contract, and that in any action against him for breach of such warranty, a reasonable attorney's fee shall be included in any judgment rendered.
- IV. When signed by both parties, this Professional Services Agreement, including the attached Scope of Services/Fees, Terms and Conditions, and Hourly Rate Schedule attached to this document, constitutes a final written expression of all terms of this Agreement and is a complete and exclusive statement of those terms. Any and all prior representations, promises, warranties, or statements by Lose Design that differ in any way from the terms of this written Agreement shall be given no force or effect. The terms of this Agreement can be modified only in writing which must be signed by both parties.

Agreed to:

Agreed to:

City of Morristown \_\_\_\_\_

Lose Design \_\_\_\_\_

Client Name

Lose & Associates, Inc., dba Lose Design

\_\_\_\_\_  
Signer's Name (Typed or Printed)

\_\_\_\_\_  
Signer's Name (Typed or Printed)

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

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

Authorized Signature

Authorized Signature

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**To Whom Should Invoices Be Directed:**

NAME: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_



## DOOR SCHEDULE

DOOR NO.	ROOM NO.	ROOM NAME	DOOR			FRAME			HARDWARE SET	MATING	DOOR FUNCTION	NOTES
			TYPE	WIDTH	HEIGHT	DEPTH	MAT	FIN				
1A	1A01	ADAM'S RESTROOM										
1B	1A02	WIFE'S RESTROOM										
1C	1A03	ADAM'S RESTROOM										
1D	1A04	WIFE'S RESTROOM										
1E	1A05	ADAM'S RESTROOM										
1F	1A06	WIFE'S RESTROOM										
1G	1A07	ADAM'S RESTROOM										
1H	1A08	WIFE'S RESTROOM										
1I	1A09	ADAM'S RESTROOM										
1J	1A10	WIFE'S RESTROOM										
1K	1A11	ADAM'S RESTROOM										
1L	1A12	WIFE'S RESTROOM										
1M	1A13	ADAM'S RESTROOM										
1N	1A14	WIFE'S RESTROOM										
1O	1A15	ADAM'S RESTROOM										
1P	1A16	WIFE'S RESTROOM										
1Q	1A17	ADAM'S RESTROOM										
1R	1A18	WIFE'S RESTROOM										

**NOTES**

- EXISTING DOOR HARDWARE TO REMAIN
- NEW ADA COMPLIANT AND PUSH/PULL PLATE FOR NEW FRAME

**DOOR HARDWARE**

ITEM #	ITEM NAME	DATE OF ORDER	ITEM #	COLOR	COMMENT
1	DOOR HANDLE				TO BE INSTALLED ON WATER SIDE
2	PULL PLATE				

## GENERAL NOTES

- DO NOT SCALE DRAWINGS. IF DIMENSIONS ARE IN QUESTION, OBTAIN CLARIFICATION FROM THE ARCHITECT BEFORE CONTINUING CONSTRUCTION.
- THE BUILDING LAYOUT SHALL BE BASED ON THE ARCHITECTURAL DRAWINGS AND COORDINATED WITH THE ARCHITECT. THE CONTRACTOR SHALL CHECK ALL GRADES AND FINAL DIMENSIONS IN THE FIELD AND REPORT ANY DISCREPANCIES TO THE ARCHITECT IMMEDIATELY.
- BUILDING MATERIALS CONTAINING ASBESTOS OR OTHER HAZARDOUS MATERIALS ARE PROHIBITED ON THIS PROJECT.
- ALL MATERIALS PROVIDED SHALL BE INSTALLED AS PER MANUFACTURER'S RECOMMENDATION AND AS PER CODE REQUIREMENTS. IF ARCHITECT'S RECOMMENDATIONS CONFLICT WITH THE MANUFACTURER'S AND CODES, NOTIFY ARCHITECT BEFORE PROCEEDING.
- ALL WORK PERFORMED UNDER THIS CONTRACT SHALL MEET ALL APPLICABLE BUILDING CODES AND THE REQUIREMENTS OF THE LOCAL AUTHORITY HAVING JURISDICTION.
- ITEMS REQUIRING FINISH SELECTIONS THAT DO NOT APPEAR IN THE DOCUMENTS SHALL BE SELECTED FROM MANUFACTURER'S PREMIUM OR DELUXE COLLECTIONS AS SELECTED BY THE ARCHITECT.
- THE DRAWINGS AND SPECIFICATIONS ARE TO BE CONSIDERED OF EQUAL VALUE. WHEN THERE IS A CONFLICT BETWEEN DRAWINGS AND SPECIFICATIONS, CONTACT THE ARCHITECT FOR CLARIFICATION BEFORE PROCEEDING. FOR BIDDING PURPOSES USE THE MORE COSTLY OPTION.
- ALL STUDS SPACING TO BE 16" O.C. UNLESS OTHERWISE INDICATED. INTERIOR DIMENSIONS ARE FROM FINISH FACE TO FACE OF ONE MEMBER UNLESS NOTED.
- MISC. LANTERN GLASS, FRAMING, FASTENERS, WIRING, ETC. NOT SPECIFICALLY CALLED OUT IN THE PROJECT DOCUMENTS BUT REQUIRED FOR ASSEMBLY OR PRODUCT INSTALLATION, SHALL BE PROVIDED BY THE CONTRACTOR.
- THE CONTRACTOR IS REQUIRED TO PROVIDE ALL LABOR, MATERIAL, AND EQUIPMENT TO FULLY CONSTRUCT THE PROJECT, WHETHER SPECIFICALLY DETAILED OR IMPLIED BY THE CONTRACTOR. AFTER REVIEW OF THE DRAWINGS, NEEDS ADDITIONAL INFORMATION OR CLARIFICATION, CONTACT THE ARCHITECT BEFORE SUBMITTING CONSTRUCTION COSTS, SUBMITTING A B.O. OR PROCEEDING WITH THE WORK.
- THE CONTRACTOR IS SOLELY RESPONSIBLE FOR JOB SITE SAFETY DURING CONSTRUCTION.
- DISPOSE OF WASTE MATERIAL IN A LEGALLY APPROVED DUMP SITE. ONCE WHITE MATERIAL LEAVES THE JOB SITE IT BECOMES THE PROPERTY OF THE CONTRACTOR. NO BURNING OF DEBRIS SHALL BE ALLOWED UNLESS APPROVED BY THE LOCAL AUTHORITY HAVING JURISDICTION.
- CONTRACTOR SHALL KEEP ALL ADJACENT STREETS FREE OF DEBRIS, MUD, GRAVEL, ETC. OR ANY ITEMS WHICH MAY CAUSE MOTORIST DIFFICULTIES.
- CONTRACTOR SHALL COORDINATE WITH LOCAL UTILITY COMPANIES CONCERNING SCHEDULING AND PLACEMENT OF UTILITY COMPANY PROVIDED ITEMS SUCH AS SEWER LINES, TRANSFORMERS, POWER POLES, FIRE HYDRANTS, BACK FLOW PREVENTERS, ETC. BEFORE STARTING CONSTRUCTION.
- PROVIDE POSITIVE DRAINAGE AT WALKS, STEPS AND LANDINGS. THERE SHALL BE NO PONDING OF WATER ON FINISHED SURFACES.
- CONTRACTOR SHALL VERIFY LOCATION OF ALL EASEMENTS, SETBACKS, ROW AND PROPERTY CORNERS BEFORE STARTING CONSTRUCTION.
- ALL 1/2" C SWING AND LEAVES SHALL BE MOUNTED TO ALLOW A 4" MINIMUM CLEARANCE BETWEEN SIDE OF SHAK AND ADJACENT WALLS AS REQUIRED.
- ALL WATER CLOSETS SHALL BE LOCATED TO ALLOW 15" BETWEEN ADJACENT SIDE WALL AND CENTER LINE OF WATER CLOSET IN INDIVIDUAL TOILET ROOMS. IN TOILET STALLS, CENTER WATER CLOSET IN STALL.
- ELECTRICAL BOXES LOCATED ON OPPOSITE SIDES OF WALLS OR PARTITIONS SHALL BE SEPARATED BY A HORIZONTAL DISTANCE OF 24 INCHES MINIMUM FOR SOUND ATTENUATION.
- ROUGH FINISHES AND JOINT CUTS AROUND ELECTRICAL OUTLETS WILL NOT BE ACCEPTED.
- INTERIOR DIMENSIONS ARE FROM FACE OF FINISH TO FACE OF FINISH, UNLESS NOTED.
- ALL INTERIOR FIRE RATED PARTITIONS SHALL EXTEND TIGHT TO STRUCTURE ABOVE AND SHALL TERMINATE AT EXTERIOR SHEATHING. NON-FIRE RATED PARTITIONS SHALL BUTT INTO FACE OF FIRE RATED PARTITION SO THAT FIRE RATING INTEGRITY IS MAINTAINED. SEAL ALL PENETRATIONS WITH APPROPRIATE RATED ASSEMBLY TO MAINTAIN THE FIRE RATING OF THE INDIVIDUAL PARTITIONS OR WALLS.
- ALL PARTITIONS ON THIS PROJECT EXTEND FROM THE FLOOR SLAB AND UPWARDS TO THE FLOOR OR ROOF DECK ABOVE UNLESS INDICATED OTHERWISE. ACOUSTICAL SOUND ATTENUATION RATINGS ARE A REQUIREMENT WITHIN MANY OF THE WALL ASSEMBLIES AND MUST BE ADHERED TO. CONNECTIONS OF THE WALLS TO THE DECK TO ADJACENT WALLS AND THE PENETRATIONS THROUGH THESE WALLS SHALL BE PROPERLY SEALED SO AS TO NOT NEGATE THESE SOUND TRANSMISSION ATTENUATION REQUIREMENTS.
- ELECTRICAL PANELS, FIRE EXTINGUISHER CABINETS, ETC. LOCATED IN RATED PARTITIONS SHALL BE BACKED WITH TYPE-X DRYWALL ON FIVE SIDES TO MAINTAIN RATING.
- CONTACT THE BUILDING OFFICIALS AND FIRE DEPARTMENT FOR SCHEDULING OF ALL REQUIRED FIELD INSPECTIONS.
- THE GENERAL CONTRACTOR IS REQUIRED TO CAREFULLY REVIEW ALL SHOP DRAWINGS, COORDINATE DIFFERENT SUBMITTALS FROM DIFFERENT TRADES, VERIFY EACH FOR COMPLETE DIMENSIONS, DETAIL REFERENCES AND OTHER FACTORS THAT MAY IMPACT THE TOTAL PROJECT. THE CONTRACTOR IS REQUIRED TO FILL IN AND CALCULATE MISSING SHOP DRAWING REQUESTED INFORMATION AND DIMENSIONS PER HIS OR HER BEST UNDERSTANDING. THE ARCHITECTURAL AND CONTRACTORS REVIEW SHALL ONLY BE FOR REPRESENTATIVITY AND VERIFICATION OF THE SUPPLIED INFORMATION BY BOTH THE VENDOR, SUB AND GENERAL CONTRACTOR. SHOP DRAWINGS SUBMITTED BY THE GENERAL CONTRACTOR THAT INDICATE ONLY "UNKNOWN EQUIPMENT" OR SIMILAR LANGUAGE WILL BE REJECTED AND MARKED FOR REBUMP.
- THESE CONTRACT DOCUMENTS (DRAWINGS AND PROJECT MANUAL/SPECIFICATIONS) ARE TO BE CONSIDERED AS A WHOLE ENTITY. ANY CONTRACTOR, SUBCONTRACTOR, OR VENDOR THAT CHOOSES TO UTILIZE ONLY A "PORTION" OF THE DOCUMENTS TO BID, CONSTRUCT, OR SUPPLY MATERIAL FOR THE PROJECT SHALL ASSUME FULL RESPONSIBILITY FOR RELATED ITEMS THAT MAY BE CONTAINED ELSEWHERE IN THE DOCUMENTS. THE OWNER WILL GRANT NO ADDITIONAL TIME OR COST FOR CONSEQUENCES THAT MAY RESULT.
- ALL EXPOSED TO VIEW SURFACE TO RECEIVE FINISH AS SHOWN.
- THE BUILDING DESIGN IS DESCRIBED IN THE CONSTRUCTION DOCUMENTS WHICH INCLUDE, BUT ARE NOT LIMITED TO THESE DRAWINGS WITH GRAPHIC DEPICTIONS OF THE CONSTRUCTION, NOTES, & DIMENSIONS AS APPROPRIATE, AND THE PROJECT MANUAL WHICH INCLUDES THE GENERAL & TECHNICAL SPECIFICATIONS AND THE SCHEDULES (AND MAY ALSO BE REFERRED TO AS THE SPEC OR THE SPECIFICATIONS). THESE TWO DOCUMENTS ARE PENDANT ON EACH OTHER AND SHALL BE UTILIZED BY THE CONTRACTOR AS THE INITIAL SET OF CONSTRUCTION DOCUMENTS. ADDENDA, SUPPLEMENTARY DRAWINGS, FIELD REVISIONS AND OTHER DOCUMENTS DURING THE CONSTRUCTION PROCESS SHALL BE TRANSMITTED AS THEY BECOME RELEVANT. THE CONTRACTOR SHALL NOT PROCEED WITH THE WORK UNTIL HAVING A CLEAR UNDERSTANDING OF THE COMPLETE PACKAGE OF DRAWINGS AND SPECS AS LISTED IN THE PROJECT MANUAL IN THE TABLE OF CONTENTS (SECTION 01) AND THE DRAWINGS (SECTION 02).
- SLIPS INTERIOR FLOOR AS SHOWN ON PLANS 1/8" PER FOOT MINIMUM. THIS APPLIES TO ALL CONCRETE FLOORING AND FLOOR TILE FINISHES.
- THE FLOOR LEVEL ON BOTH SIDES OF ALL DOORS SHALL BE LEVEL FOR THE WIDTH OF THE DOOR.
- ALL DOOR FRAMES WHICH ARE INTENDED TO HAVE A DOOR WITH A SWING GREATER THAN 90 DEGREES SHALL BE SET BACK 1/4" FROM THE EXTERIOR WALL FACE ON THE SWING SIDE.
- CONTRACTING PARTIES SHALL APPROVE THE SUBSTRATES PREPARED FOR THEIR SYSTEM INSTALLATIONS PRIOR TO BEGINNING THE INSTALLATION OF THEIR SYSTEMS. THEY SHALL REPORT ALL DEFICIENCIES TO THE SUPERINTENDENT, THE GC, AND TO THE ARCHITECT, UPON COMMENCING WITH THE INSTALLATION OF THEIR SYSTEM OVER A SUBSTRATE PREPARED BY THEMSELVES, ANOTHER COMPANY, OR ANOTHER PERSON. (SUBCONTRACTORS) SHALL, BY DEFINITION, BE DEEMED TO HAVE THOROUGHLY INSPECTED AND FORMALLY APPROVED AND ACCEPTED ALL SUBSTRATES OVER WHICH HE INSTALLS HIS SYSTEMS. THE GC SHALL ALLOW THE NECESSARY TIME IN THE SCHEDULE FOR SUBCONTRACTORS TO INSPECT SAID SUBSTRATES.
- QUALITY MANUFACTURERS STANDARD TRANSITION STRIPS BETWEEN DISSIMILAR FLOORING MATERIALS (CARPET TO VCT, PROVIDE MARBLE TRANSITION THRESHOLD BETWEEN VCT AND CERAMIC FLOOR TILE, ALL TRANSITIONS BETWEEN DISSIMILAR TILE TO BE ALIGNED UNDER THE DOOR LOCATION).

## LEGEND GRAPHIC SYMBOLS

	CROWN LINE		DETAIL SECTION REFERENCE CUT
	9'-4" DIMENSION LINE (NOMINAL LINE)		WALL SECTION REFERENCE CUT
	DOOR		BUILDING SECTION REFERENCE CUT
	DOOR TAG (SEE DOOR SCHEDULE)		EXT. ELEVATION REFERENCE
	WINDOW		INT. ELEVATION REFERENCE
	WINDOW TAG (SEE WINDOW SCHEDULE)		LARGE SCALE DETAIL REFERENCE MARK
	WINDOW DESIGNATION		REVISION
	PLAN KEYNOTE		SLOPED FLOOR WITH FLOOR DRAIN
	EXTENSION ELEVATION NOTE		ROOM NAME AND NUMBER
	HABIT ACCESSIBILITIES		
	ACCESS MARK		
	SIGNAGE ROOM AND ALLOC.		

## CODE REVIEW

- APPLICABLE CODES**
  - 2008 INTERNATIONAL BUILDING CODE AND APPENDICES A, B, C, D, F, G, I (BC)
  - 2008 NFPA UNIFORM FIRE CODE
  - 2008 INTERNATIONAL MECHANICAL CODE AND APPENDIX A
  - 2008 NATIONAL ELECTRICAL CODE
  - 2002 NORTH CAROLINA ACCESSIBILITY CODE (REVISED 2004)
  - 2008 INTERNATIONAL PROPERTY MAINTENANCE CODE
  - 2008 INTERNATIONAL EXISTING BUILDING CODE
  - 2008 INTERNATIONAL FUEL GAS CODE AND APPENDICES A, B, C, D
  - 2008 INTERNATIONAL PLUMBING CODE AND APPENDICES B & F
- OCCUPANCY GROUP**
  - RENOVATION OF EXISTING BUILDING BUSINESS GROUP
- CALCULATED OCCUPANT LOAD (SEE SEC 14 TABLE 1008.1.1.1 (SEE TABLE 1008.1.1.1))**
  - BUILDING 1: 282 SF / 100 PER OCC = 3 OCC (ALL SPACES HAVE DIRECT EXTERIOR EXITS)
  - BUILDING 2: 196 SF / 100 PER OCC = 2 OCC (ALL SPACES HAVE DIRECT EXTERIOR EXITS)
  - BUILDING 3: 231 SF / 100 PER OCC = 3 OCC (ALL SPACES HAVE DIRECT EXTERIOR EXITS)
  - BUILDING 4: 319 SF / 100 PER OCC = 4 OCC (ALL SPACES HAVE DIRECT EXTERIOR EXITS)
  - BUILDING 5: 333 SF / 100 PER OCC = 4 OCC (ALL SPACES HAVE DIRECT EXTERIOR EXITS)
  - BUILDING 6: 212 SF / 100 PER OCC = 3 OCC (ALL SPACES HAVE DIRECT EXTERIOR EXITS)
  - BUILDING 7: 435 SF / 100 PER OCC = 5 OCC (ALL SPACES HAVE DIRECT EXTERIOR EXITS)
- TYPE OF CONSTRUCTION (SEE CODE)**
  - CONSTRUCTION TYPE III (VICTORY PROTECTED / NON-SPRINKLER)
  - RESTROOM TYPE V-B (UN-PROTECTED / NON-SPRINKLER)
- FIRE RATING (SEE TABLE 602.10.1.1 (SEE TABLE 602.10.1.1))**

STRUCTURAL FRAME	REQUIRED	ACTUAL
BEARING WALL-EXT. (TABLE 602) SUPPORT ROOF ONLY	0	0
NONBEARING WALL-EXTERIOR SUPPORT ROOF ONLY	0	0
NONBEARING WALL-INTERIOR	0	0
ROOF CONSTRUCTION SUPPORT ROOF ONLY	0	0
ROOF CEILING ASSEMBLY	0	0
- BUILDING AREA / HEIGHT (SEE TABLE 503)**

OCCUPANCY TYPE	ALLOWED	ACTUAL
RESTROOM	5000 SF	1 STORY (ALL RESTROOMS)
FAMILY RESTROOM	45 FTH STORES	19'-0" - 1 STORY
- MEANS OF EGRESS**
  - DOOR WIDTH + 3" MIN REQUIRED (LSC 7-2.2.6) 36" ACTUAL FOR ALL DOORS
  - 500' MIN CORRIDOR - 20'7" MAX (LSC 10-2.2.2) ACTUAL: 9'-6" (IN PLUMBING CHASE, R/O 2)
  - COMMON PATH OF TRAVEL + 15 FT MAX (LSC 10-2.2.3) ALL SPACES HAVE DIRECT EXITS TO THE OUTSIDE
  - TRAVEL DISTANCE + 200 FT MAX (LSC 10-2.2.2)
  - RAMP DEVIATE NOT REQUIRED. NOT PROVIDED FOR SPACES OF LESS THAN 100 OCC (12-2-2-3)
- FIRE PROTECTION**
  - FIRE ALARM SYSTEM NOT REQUIRED (LSC 9-3.1.1)
- INTERIOR FINISH (LSC 12-3)**

LSC TABLE 12-2.2	REQUIRED	ACTUAL (ALL SPACES)
WALL & CEILING	CLASS B - EXITS	PRINTED GYPSUM PLYWOOD CEILING
FLOORS	CLASS I MIN. IN EXT. ENCLOSURE	SEALED CONC. EPOXY FLOORING
	NO REQUIREMENT IN OTHER SPACES	
- ROOF COVERINGS**
  - SEE SPEC ITEM FOR CONSTRUCTION TYPE V-B (BC TABLE 1503.1) ACTUAL - GALV. STEEL METAL ROOF PANEL TO COMPLY WITH 1507.4

## SIGNAGE SCHEDULE

MOUNTING HEIGHT

5'0" ADA  
4'0" OTHER

15'1" SIGNAGE PROVIDED AS A NUMBER OF ACCESSIBLE RESTROOMS

## SIGNAGE SCHEDULE - SEE FLOOR PLAN FOR LOCATIONS

NO.	SYMBOL	TEXT	LOCATION	REMARKS
1	1A	ADAM'S RESTROOM	1A-1	PROVIDE ADA SYMBOL AND BRaille
2	1B	WIFE'S RESTROOM	1A-2	PROVIDE ADA SYMBOL AND BRaille
3	1C	ADAM'S RESTROOM	1A-3	PROVIDE ADA SYMBOL AND BRaille
4	1D	WIFE'S RESTROOM	1A-4	PROVIDE ADA SYMBOL AND BRaille
5	1E	ADAM'S RESTROOM	1A-5	PROVIDE ADA SYMBOL AND BRaille
6	1F	WIFE'S RESTROOM	1A-6	PROVIDE ADA SYMBOL AND BRaille
7	1G	ADAM'S RESTROOM	1A-7	PROVIDE ADA SYMBOL AND BRaille
8	1H	WIFE'S RESTROOM	1A-8	PROVIDE ADA SYMBOL AND BRaille
9	1I	ADAM'S RESTROOM	1A-9	PROVIDE ADA SYMBOL AND BRaille
10	1J	WIFE'S RESTROOM	1A-10	PROVIDE ADA SYMBOL AND BRaille
11	1K	ADAM'S RESTROOM	1A-11	PROVIDE ADA SYMBOL AND BRaille
12	1L	WIFE'S RESTROOM	1A-12	PROVIDE ADA SYMBOL AND BRaille
13	1M	ADAM'S RESTROOM	1A-13	PROVIDE ADA SYMBOL AND BRaille
14	1N	WIFE'S RESTROOM	1A-14	PROVIDE ADA SYMBOL AND BRaille
15	1O	ADAM'S RESTROOM	1A-15	PROVIDE ADA SYMBOL AND BRaille
16	1P	WIFE'S RESTROOM	1A-16	PROVIDE ADA SYMBOL AND BRaille
17	1Q	ADAM'S RESTROOM	1A-17	PROVIDE ADA SYMBOL AND BRaille
18	1R	WIFE'S RESTROOM	1A-18	PROVIDE ADA SYMBOL AND BRaille

## GENERAL NOTES

- PROVIDE SIGNAGE AT ALL EXTERIOR DOORS LOCATIONS VERIFY WITH SIGNAGE LOCATIONS AND VERTICAL CLEARANCE FOR MOUNTING HEIGHT.
- ALL SIGNAGE SHALL INCLUDE BRaille AND HANDED LETTERING. MEET ALL ADA & LOCAL ACCESSIBILITY REQUIREMENTS.
- ALL SIGNAGE TO BE 1/2" MIN. THICK.
- PROVIDE SIGNAGE IN FACE OF SIGN AS ALL SIGNAGE LOCATIONS.
- PROVIDE STAINLESS STEEL SIGNAGE WITH ANTI-CORROSION TREATMENT.

## ABBREVIATIONS

AB - ANCHOR BOLTS	FD - FLOOR DRAIN	N.I.C. - NOT IN CONTRACT
ABV - ABOVE	F-F - FIRE EXTINGUISHER	N.T.S. - NOT TO SCALE
A.C.T. - ACOUSTICAL CEILING TILE	FIN - FINISH	O.C. - ON CENTER
ADA - AMERICANS WITH DISABILITIES ACT	FL - FLOOR	O.F.C.I. - OWNER FURNISHED CONTRACTOR INSTALLED**
A.F.F. - ABOVE FINISHED FLOOR	FLUOR - FLUORESCENT	O.F.O.I. - OWNER FURNISHED CONTRACTOR INSTALLED
ALUM. - ALUMINUM	FRMG. - FRAMING	O.F.E. - OWNER FURNISHED EQUIPMENT
BLK. - BLOCKING	FT. - FEET	OPP. - OPPOSITE
B.C.T. - BOTTOM	FTS. - FOOTING	PLYWD. - PLYWOOD
C.C. - CENTER TO CENTER	F-TRTD. - FIRE TREATED	PRP. - PRESSURE TREATED
C.J. - CONTROL JOINT	FKT. - FUTURE	REQD. - REQUIRED
CL - CENTER LINE	FR - FLOOR FINISH	REINF. - REINFORCING
C.L.G. - CEILING	GC - GROSS SQUARE FEET	SHT. - SHEET
C.M.U. - CONCRETE MASONRY UNIT	HC - HANDICAPPED	SIM - SIMILAR
C.S. - CONCRETE	H.M. - HOLLOW METAL	SQ. - SQUARE
CONSTR. - CONSTRUCTION	H.C.H. - HORIZONTAL	SS - STANDING SEAM
COORD. - COORDINATE	JST. - JOIST	ST. - STAINLESS STEEL
D.F. - DRINKING FOUNTAIN	JT. - JOINT	STL. - STEEL
D.S. - DRAINSPLOUT	MANUF. - MANUFACTURER	T&G - TONGUE AND GROOVE
EA. - EACH	MAX. - MAXIMUM	T.O. - TOP OF
E.C.T. - EXPANSION JOINT	MIN. - MINIMUM	TEMP. - TEMPERED
E.C.P. - EQUIPMENT	MO. - MASONRY OPENING	TLI. - TOILET
E.Q. - EQUAL	MTD. - MOUNTED	
E.W.C. - ELECTRICAL WATER COOLER		



**OCCUPANCY GROUP**

RENOVATION OF EXISTING BUILDING BUSINESS GROUP

**BUILDING AREA / HEIGHT (SEE TABLE 503)**

OCCUPANCY TYPE	ALLOWED	ACTUAL
RESTROOM	5000 SF	1 STORY (ALL RESTROOMS)
FAMILY RESTROOM	45 FTH STORES	19'-0" - 1 STORY

**MEANS OF EGRESS**

- DOOR WIDTH + 3" MIN REQUIRED (LSC 7-2.2.6) 36" ACTUAL FOR ALL DOORS
- 500' MIN CORRIDOR - 20'7" MAX (LSC 10-2.2.2) ACTUAL: 9'-6" (IN PLUMBING CHASE, R/O 2)
- COMMON PATH OF TRAVEL + 15 FT MAX (LSC 10-2.2.3) ALL SPACES HAVE DIRECT EXITS TO THE OUTSIDE
- TRAVEL DISTANCE + 200 FT MAX (LSC 10-2.2.2)
- RAMP DEVIATE NOT REQUIRED. NOT PROVIDED FOR SPACES OF LESS THAN 100 OCC (12-2-2-3)

**FIRE PROTECTION**

- FIRE ALARM SYSTEM NOT REQUIRED (LSC 9-3.1.1)

**INTERIOR FINISH (LSC 12-3)**

LSC TABLE 12-2.2	REQUIRED	ACTUAL (ALL SPACES)
WALL & CEILING	CLASS B - EXITS	PRINTED GYPSUM PLYWOOD CEILING
FLOORS	CLASS I MIN. IN EXT. ENCLOSURE	SEALED CONC. EPOXY FLOORING
	NO REQUIREMENT IN OTHER SPACES	

**ROOF COVERINGS**

- SEE SPEC ITEM FOR CONSTRUCTION TYPE V-B (BC TABLE 1503.1) ACTUAL - GALV. STEEL METAL ROOF PANEL TO COMPLY WITH 1507.4

NO.	SYMBOL	TEXT	LOCATION	REMARKS
1	1A	ADAM'S RESTROOM	1A-1	PROVIDE ADA SYMBOL AND BRaille
2	1B	WIFE'S RESTROOM	1A-2	PROVIDE ADA SYMBOL AND BRaille
3	1C	ADAM'S RESTROOM	1A-3	PROVIDE ADA SYMBOL AND BRaille
4	1D	WIFE'S RESTROOM	1A-4	PROVIDE ADA SYMBOL AND BRaille
5	1E	ADAM'S RESTROOM	1A-5	PROVIDE ADA SYMBOL AND BRaille
6	1F	WIFE'S RESTROOM	1A-6	PROVIDE ADA SYMBOL AND BRaille
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10	1J	WIFE'S RESTROOM	1A-10	PROVIDE ADA SYMBOL AND BRaille
11	1K	ADAM'S RESTROOM	1A-11	PROVIDE ADA SYMBOL AND BRaille
12	1L	WIFE'S RESTROOM	1A-12	PROVIDE ADA SYMBOL AND BRaille
13	1M	ADAM'S RESTROOM	1A-13	PROVIDE ADA SYMBOL AND BRaille
14	1N	WIFE'S RESTROOM	1A-14	PROVIDE ADA SYMBOL AND BRaille
15	1O	ADAM'S RESTROOM	1A-15	PROVIDE ADA SYMBOL AND BRaille
16	1P	WIFE'S RESTROOM	1A-16	PROVIDE ADA SYMBOL AND BRaille
17	1Q	ADAM'S RESTROOM	1A-17	PROVIDE ADA SYMBOL AND BRaille
18	1R	WIFE'S RESTROOM	1A-18	PROVIDE ADA SYMBOL AND BRaille

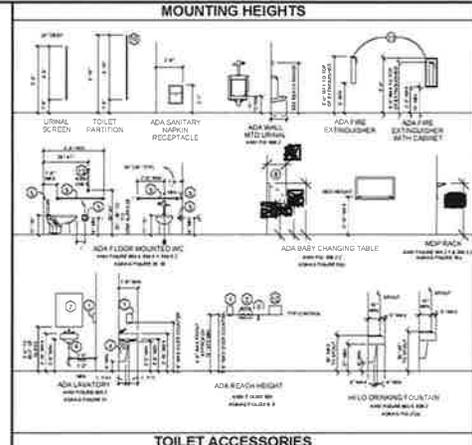
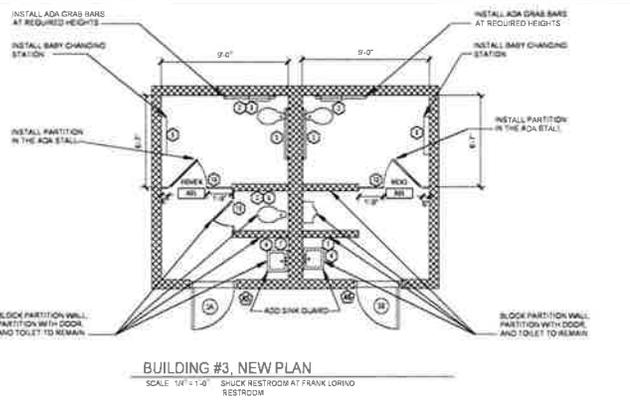
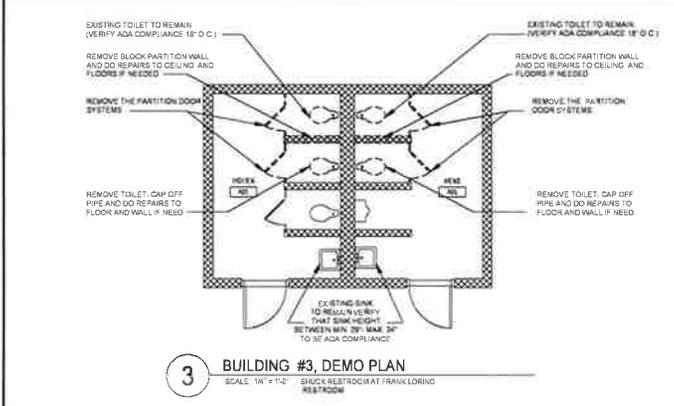
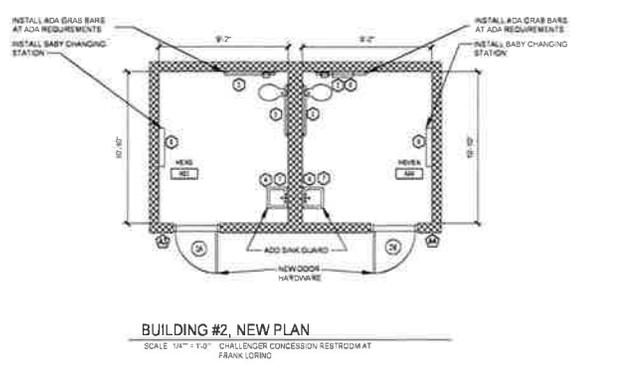
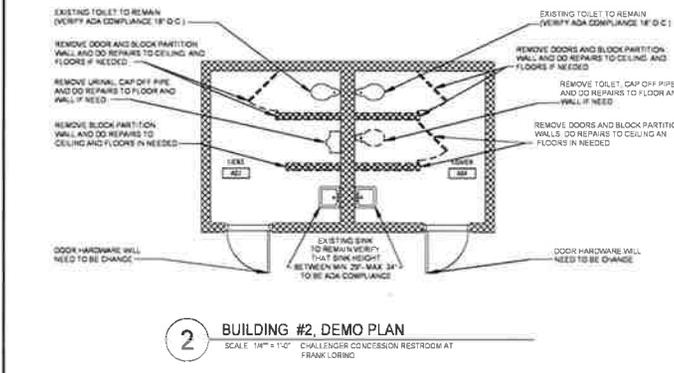
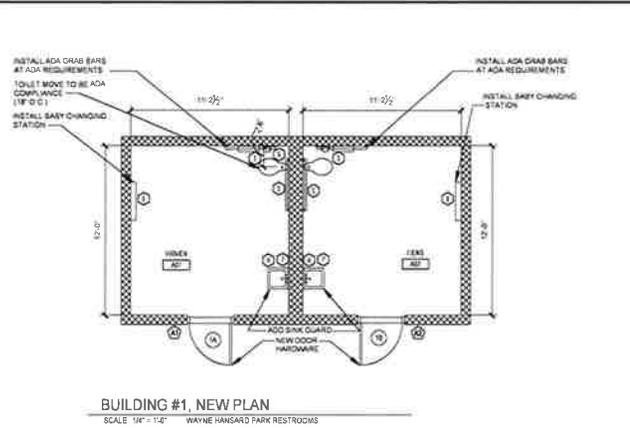
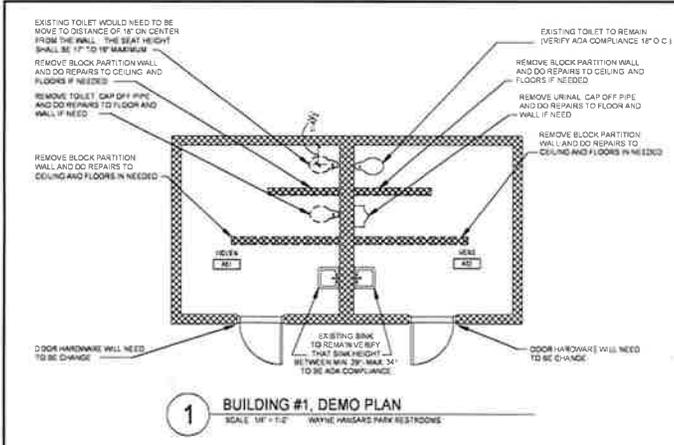
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MORRISTOWN PARK BUILDINGS - ADA IMPROVEMENTS  
MULTIPLE PARKS - LPRF GRANT

PREPARED FOR:  
MORRISTOWN PARKS & RECREATION

TENNESSEE  
MORRISTOWN

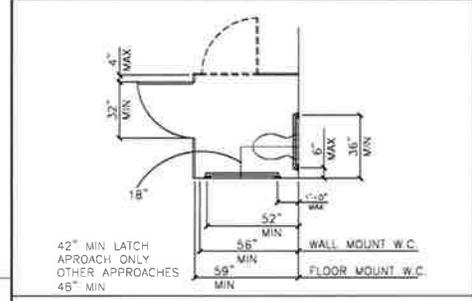




**TOILET ACCESSORIES**

1 SOAP DISPENSER	2 ADA TOILET GRAB BARS (BOTH SIDES TO BE 36" SEPARATED AT SIDES, SEE SPEC FOR TYPE)	3 BABY CHANGING STATION
4 TOILET PAPER DISPENSER	5 SANITARY NAPIN RECEPTACLE	6 ROBE-HOOK
7 ADA DRINK PIPE SHIELD	8 NEW 4.375" WIDENING	9 TOILET PARTITION
10 ADA GRAB PIPE SHIELD	11 FIRE EXTINGUISHER	12 PAPER TOWEL DISPENSER

NOTE: DIMS SHOWN ARE TO BE USED AS GUIDELINES UNLESS NOTED OTHERWISE ON PLAN.



**RESTROOM ACCESSORY**  
(BANK & BASE OF FIXTURE)

ITEM NO.	QUANTITY	DESCRIPTION	REMARKS
1	1	TOILET	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR TOILET ROOM FLANGES)
2	1	URINAL	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR URINAL FLANGES)
3	1	SOAP DISPENSER	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR SOAP DISPENSER FLANGES)
4	1	TOILET PAPER DISPENSER	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR TOILET PAPER DISPENSER FLANGES)
5	1	ADA SANITARY NAPIN RECEPTACLE	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR ADA SANITARY NAPIN RECEPTACLE FLANGES)
6	1	ADA FIRE EXTINGUISHER	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR ADA FIRE EXTINGUISHER FLANGES)
7	1	ADA FIRE EXTINGUISHER WITH CABINET	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR ADA FIRE EXTINGUISHER WITH CABINET FLANGES)
8	1	ADA FLOOR MOUNTED INC.	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR ADA FLOOR MOUNTED INC. FLANGES)
9	1	ADA WALL MOUNTED INC.	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR ADA WALL MOUNTED INC. FLANGES)
10	1	ADA BABY CHANGING TABLE	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR ADA BABY CHANGING TABLE FLANGES)
11	1	ADA REACH HEIGHT	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR ADA REACH HEIGHT FLANGES)
12	1	ADA SANITARY NAPIN RECEPTACLE	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR ADA SANITARY NAPIN RECEPTACLE FLANGES)
13	1	H/O DRINKING FOUNTAIN	1/2" BORE POLISHED BRASS, 1/2" DIA. (SEE SPEC FOR H/O DRINKING FOUNTAIN FLANGES)

**GENERAL NOTES**

EXISTING RESTROOM ADA IMPROVEMENT PLANS

PROJECT NO. DATE

SCALE

DESIGNED BY

AS NOTED

**L.A. CONSULTING, INC.**  
1000 W. 10TH AVENUE, SUITE 100  
DENVER, CO 80202  
TEL: 303.733.1111  
WWW.LACONSULTING.COM

**MORRISTOWN PARK BUILDINGS - ADA IMPROVEMENTS**  
MULTIPLE PARKS - LPRF GRANT  
PREPARED FOR MORRISTOWN PARKS & RECREATION  
MORRISTOWN, TENNESSEE

PERMIT SET

SHEET TITLE

EXISTING RESTROOM ADA IMPROVEMENT PLANS

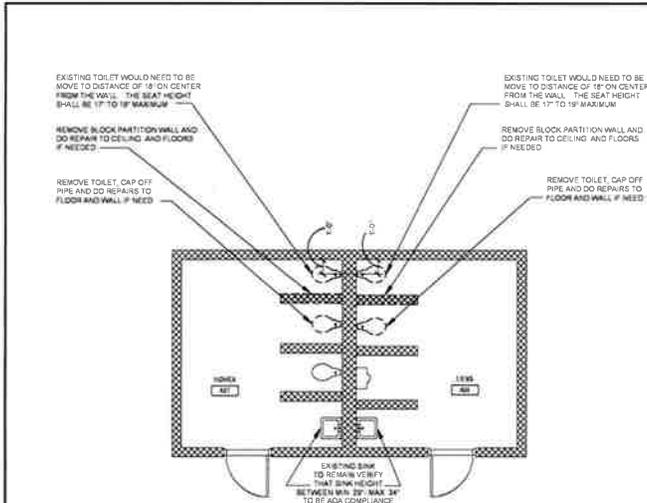
PROJECT NO. DATE

SCALE

DESIGNED BY

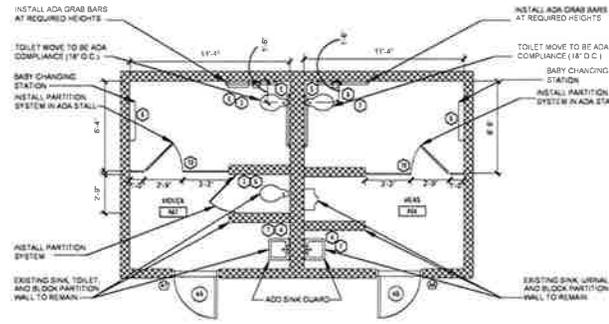
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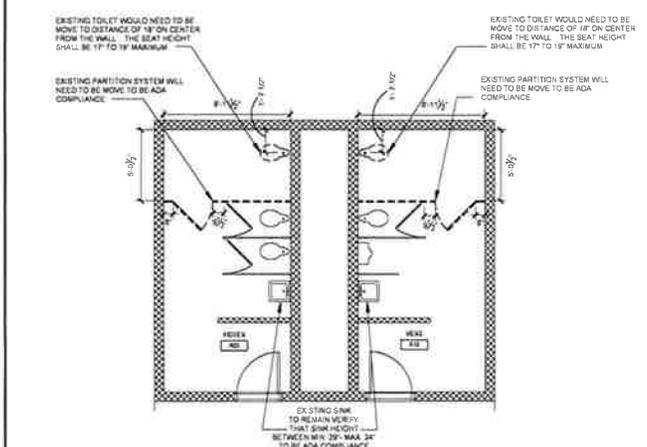
**1 BUILDING #4, DEMO PLAN**

SCALE: 1/4" = 1'-0" DISC COLT RESTROOM AT FRANK LORING PARK



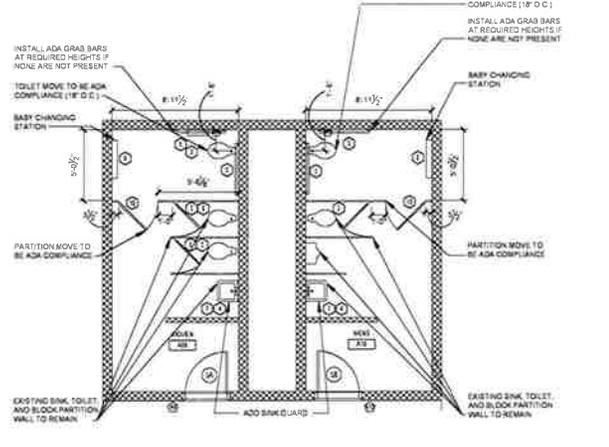
**BUILDING #4, NEW PLAN**

SCALE: 1/4" = 1'-0" DISC COLT RESTROOM AT FRANK LORING PARK



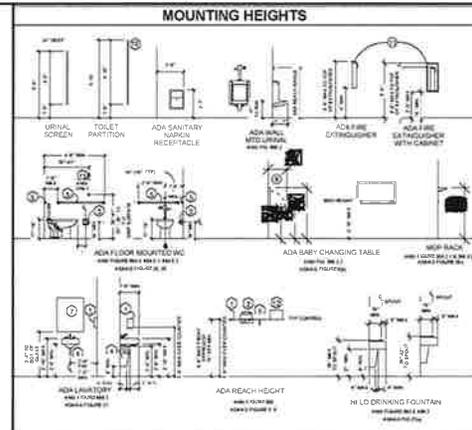
**2 BUILDING #5, DEMO PLAN**

SCALE: 1/4" = 1'-0" FRED MILLER PARK



**BUILDING #5, NEW PLAN**

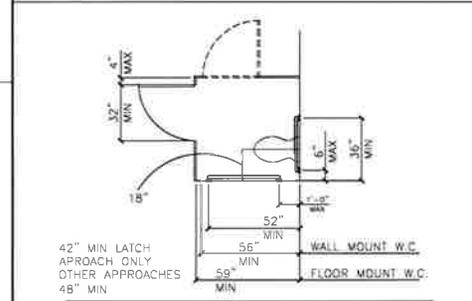
SCALE: 1/4" = 1'-0" FRED MILLER PARK



**TOILET ACCESSORIES**

- 1 SOAP DISPENSER
- 2 SELECT/SWITCH/WADA ACCESSIBLE
- 3 TOILET FRAME DISPENSER
- 4 ADA SHAM POPE SHIELD
- 5 ADA TOILET SEAT W/INCH BOWLS TO BE 18" MINIMUM 2" AT SIDES. SEE SPEC. FOR TYPE.
- 6 SANITARY NAPKIN DISPENSER
- 7 18W X 26H MIRROR
- 8 BABY CHANGING STATION
- 9 WIDE HOOK
- 10 TOILET PARTITION
- 11 FIRE EXTINGUISHER
- 12 PAPER TOWEL DISPENSER

**ADA RESTROOM MINIMUM DESIGN**



**RESTROOM ACCESSORY**

ITEM NO.	QUANTITY	DESCRIPTION
1	1	1/2\"/>
2	1	1\"/>
3	1	1\"/>
4	1	1\"/>
5	1	1\"/>
6	1	1\"/>
7	1	1\"/>
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10	1	1\"/>
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12	1	1\"/>

**GENERAL NOTES**

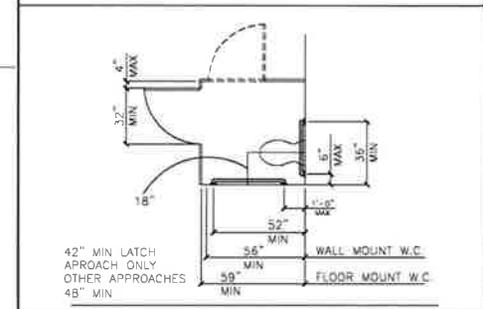
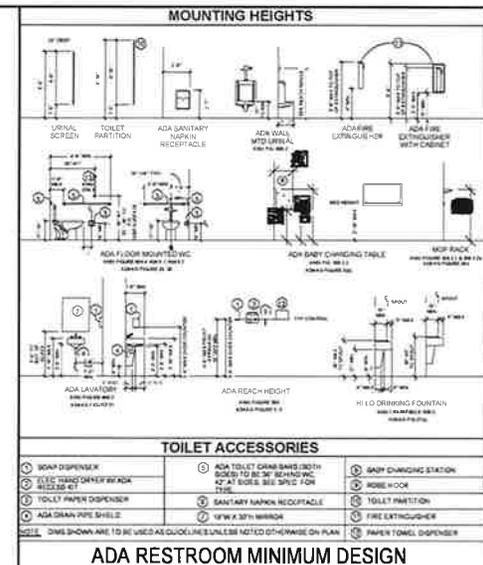
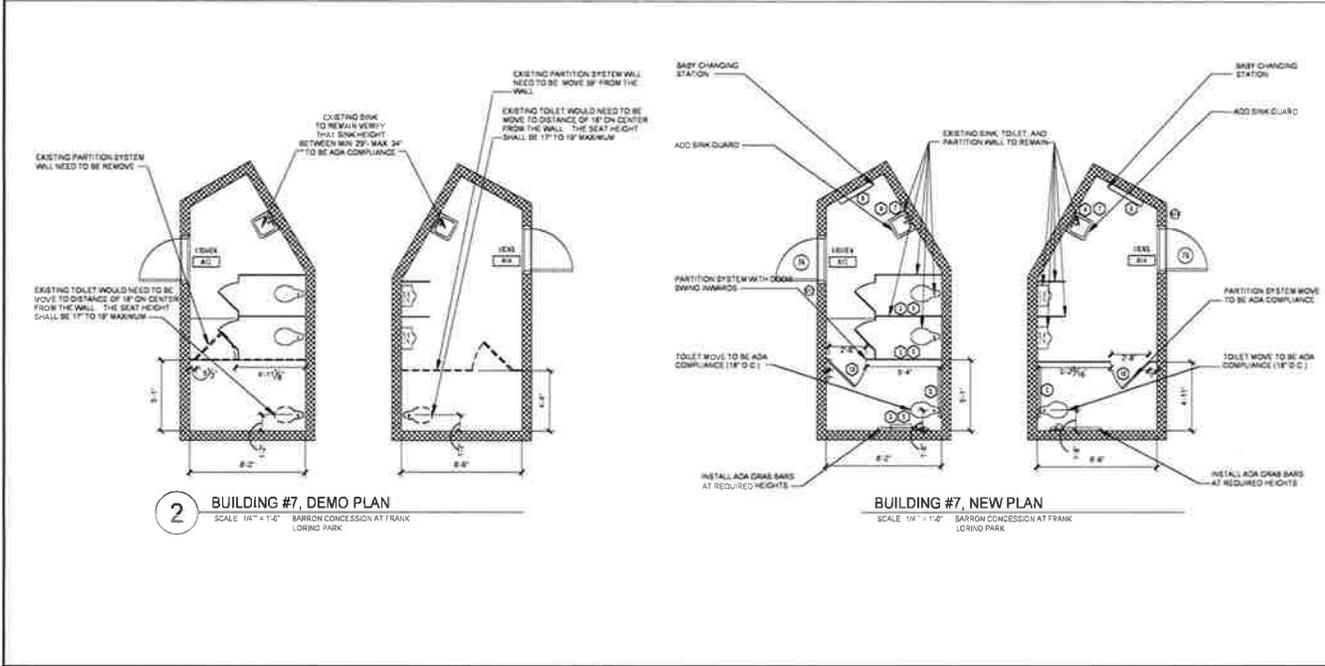
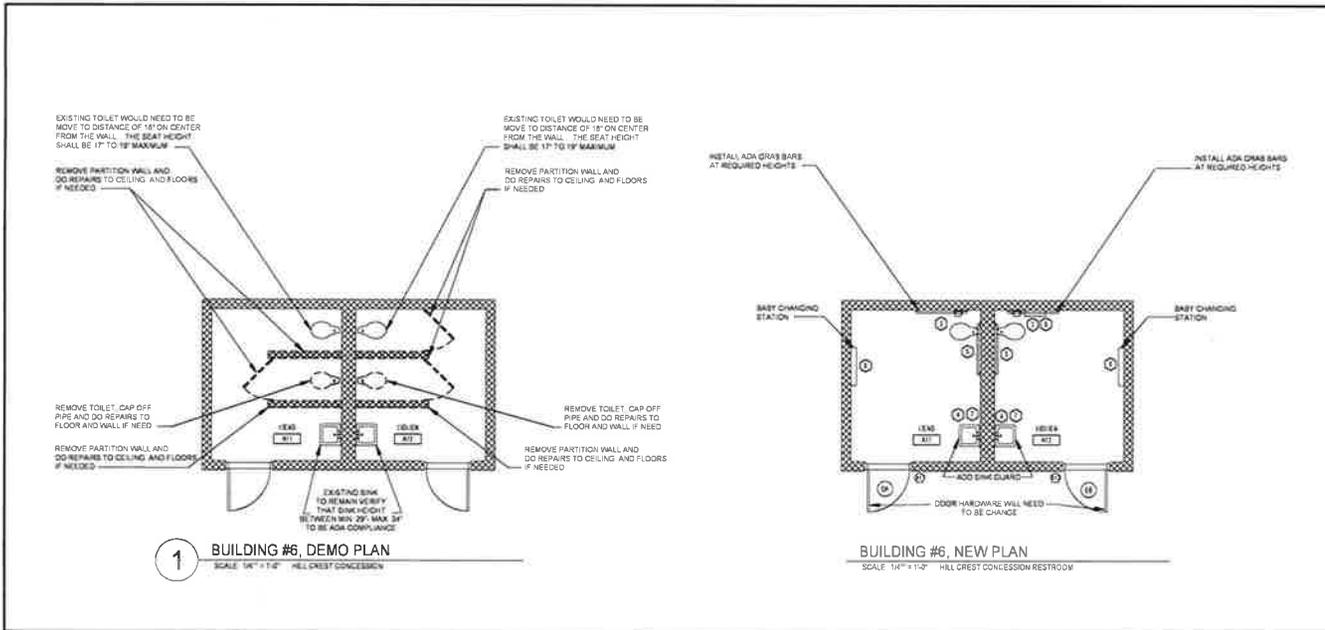
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3	1	1
4	1	1
5	1	1
6	1	1
7	1	1
8	1	1
9	1	1
10	1	1
11	1	1
12	1	1



**MORRISTOWN PARK BUILDINGS - ADA IMPROVEMENTS**  
**MULTIPLE PARKS - LPRF GRANT**  
 PREPARED FOR MORRISTOWN PARKS & RECREATION  
 MORRISTOWN, TENNESSEE

PROJECT NO. 2024-001  
 DATE: 08/20/24  
 DRAWN BY: J. COLE  
 CHECKED BY: M.C.  
 SHEET NO. 1 OF 1

PROJECT NO.	DATE
DRAWN BY	CHECKED BY
CHECKED BY	AS NOTED
SHEET NO.	



SYMBOL	DESCRIPTION	NOTED
1	TOILET	TOILET PARTITION
2	TOILET PARTITION	TOILET PARTITION
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**GENERAL NOTES**

**MORRISTOWN PARK BUILDINGS - ADA IMPROVEMENTS**  
**MULTIPLE PARKS - LPRF GRANT**  
PREPARED FOR:  
MORRISTOWN PARKS & RECREATION  
MORRISTOWN, TENNESSEE

PROJECT NO. DATE  
DESIGN BY SCALE  
CHECKED BY AS NOTED  
PROJECT NO.

**A1.3**



December 1, 2020

Mr. Joey Barnard  
Assistant City Administrator  
City of Morristown  
100 West First North Street  
Morristown, TN. 37818

RE: Fulton Hill Park – Phase 2

Dear Joey,

Lose Design, provider of landscape architecture, land planning, architecture, and civil engineering services, is pleased to offer its professional services for your project in Morristown, Tennessee. Services required include permanent entry signage placement, and trail routing and dog park visioning.

If this proposal is acceptable, please provide your authorization on the space provided on the attached signature page and return one signed copy to our office. Once the agreement is received, a fully executed contract will be forwarded for your files.

Sincerely,

LOSE DESIGN

A handwritten signature in black ink, appearing to read "Sean Guth", with a stylized flourish at the end.

Sean Guth, AIA, NCARB, LEED AP  
Associate Vice President - Architecture

Attachments:  
Professional Services Agreement  
--Scope of Services/Fees  
--Terms and Conditions  
--Hourly Rate Schedule  
--Signature Page

# PROFESSIONAL SERVICES AGREEMENT

## SCOPE OF SERVICES/FEEES

*Fulton Hill Park – Phase 2*

*Morristown, Tennessee*

### Project Description

Lose Design understands that The City of Morristown (Client) desires to have the masterplan of Fulton Hill Park updated to reflect new program elements being proposed. We also understand that the Client desires Lose Design to identify the locations and design of two, proposed entry signs and identify routing of up to one mile of hiking trails (unimproved). Once the concepts are approved Lose will develop construction documents for the signage and trails. The scope of services will consist of:

### Task 1 - Project Management, Meetings & Data Coordination/Collection

This task will consist of the following:

- General coordination with the Client consisting of phone calls, emails, and status updates.
- Lose will attend one (1) review meeting with the client to present final signage development and routing of the hiking trails.
- Project management services expected for task 1 - 3.

### Task 2 – Signage (Entry, Interpretive & Wayfinding)

This task will consist of the following:

- **(Entry Signage)** - Lose will propose new locations for the entry signs and update the master plan to reflect the development of entry signage at 2 locations on the site. First location for proposed signage will be at N. Cumberland Drive and 6<sup>th</sup> Street and the second location will be at the future connection to N. Cumberland drive across the street from Cherokee Drive.
- Lose will generate a concept and present it to the City.
- Upon approval from the City, Lose will advance the entry signage to a final design Construction Documentation level and show the locations on the updated masterplan.
- Lose will develop an opinion of probable cost for park development and for interpretive elements.

**Task 3 – Hiking Trails (Unimproved)**

This task will consist of the following:

- Lose will present a concept plan of the trail routing to the city for approval.
- Lose will work with a third party to get a topographic survey of the property intended for the trails.
- Upon approval of the trail routing, Lose will work with a third party stake to the center line of the trail to identify conflicts or challenges before final routing is approved. If any changes are desired in the field, Lose will modify routing and then update graphics to reflect those modifications.
- Lose will apply the master plan updates and will be advanced to a final design level. An overall phase 2 master plan rendering will be developed along with enlargements of key park areas to show context of the trail's connection to the existing walkways on-site.
- Lose will develop an opinion of probable cost for the trail alignment.

**Task 4 – Construction Documents**

This task will include the development and provision of Construction Documents for all necessary documentation for the construction of the signage and trails described above. The scoping is understood as follows:

**Site:**

- Lose will develop a signage package that will have the critical dimensions, material callouts and design intent for shop drawing to be developed for the exact constructability of the entry signs.
- Utilizing survey information provided by the City of Morristown, Lose will prepare a digital base file for design of the proposed trail improvements.
- Lose will prepare a cover sheet with site information, required information by the City and general notes. In addition, there will be a vicinity map, project information and site data table.
- Lose will prepare a demolition plan for elements on site to be modified and removed.
- Lose will prepare construction documents for site improvements associated with the signage and trail routing.
- Lose will create a grading plan with 1' contours and spot elevations indicating grades for proposed trail alignment.
- Lose will create a three phase Erosion Protection and Sediment Control plan indicating measures to reduce sediment transportation along with details of proposed measures.
- Lose will make application for Notice of Coverage (NOC) for the proposed disturbed area required for site.
- Lose will create construction details at various scales for contractor's convenience and indicating desired construction conditions.
- Lose will submit 95% plans to the City of Morristown for review and comment.
- Lose will address comments from 95% set review.
- Lose will submit final bid set to the City of Morristown for review and comment.
- Lose will address comments from bid set prior to bid.
- Lose will provide an Opinion of Probable Cost prior to bid.
- This task consists of up to one (1) revisions and submittals to the City of Hendersonville.

#### **Task 5 – Bidding Services**

Bid drawings along with a bid specification manual will be prepared for the project. During the bid process, we will coordinate with the client team and city purchasing staff for the distribution of bid documents. Our team members will attend and help facilitate a pre-bid meeting for the prospective contractors. We will respond to contractor questions and issue clarifications and addenda, as necessary. We will assist your team in analyzing contractor bids and in the contract award.

#### **Task 6 – Additional Services**

Only items of work specifically called out under the Scope of Services section of this agreement are to be performed for the specified fees as a part of the contract. The Design Professional will consider any items not so specified as "Additional Services" and will perform those services upon request on an hourly fee basis. Such Additional Services may include, but are not limited to, the following:

- Environmental assessments and/or permits other than those specified in Scope of Services;
- Site visits beyond those required to provide the design services listed in Scope of Services;
- Detailed design services associated with any work designed by others to include but not limited to; structural engineering, geotechnical engineering, electrical engineering, surveying or environmental specialists;
- Changes in drawings, specifications, or other documents required by the Client after acceptance of the construction plans by Client;
- Preparation of marketing materials such as pamphlets, brochures, etc.
- Meetings or negotiations with agencies or utilities other than those specified in Scope of Services.
- Other items requested by the Client or his representative not included elsewhere in this agreement

#### **Exclusions**

- Professional Services other than those listed in the above Scope of Services;
- Specialized environmental services other than those listed in the above Scope of Services;
- Structural Engineering;
- MP&E Services;
- Detailed Cost Estimating Services;
- Detailed Construction Inspections other than those listed in the above Scope of Services;
- Attending neighborhood meetings or other community-based meeting other than those listed in the Scope of Services;

#### **Client Responsibilities**

- Surveying and Topographical Services
- General Conditions of this Agreement
- Providing Access to the Subject Parcel
- Review/Submittal/Permit Fees
- Procurement of additional consultants



**Fees**

The services described herein will be provided on a Lump Sum (LS) or hourly fee basis as follows:

<b><u>Description of Services</u></b>	<b><u>Fee Amount</u></b> <sup>(1)</sup>
1 – Project Management, Meetings.....	\$2,500.00
2 – Entry Signage .....	\$1,500.00
3 – Hiking Trails.....	\$1,500.00
4 – Construction Documents.....	\$5,500.00
5 – Bidding Services .....	\$1,500.00
6 – Additional Services.....	Hourly, as needed
<b>Total</b> .....	<b>\$12,500.00</b>

**Notes:**

**(1)** Expense amounts are **not** included in these fees, and are inclusive of reasonable out-of-pocket expenses incurred on behalf of the client and shall include travel and subsistence, plotting and reproduction, telephone/communications, deliveries, agency fees, and mileage. Expenses shall be billed in accordance with Attachment A.

**Remit Payment To:**

Lose Design  
 Attn: Accounts Receivable  
 2809 Foster Avenue  
 Nashville, TN 37210

**Questions May Be Directed to:**

Tammy Boyte  
 Controller  
[tboyte@lose.design](mailto:tboyte@lose.design)  
 615-767-5811

## TERMS AND CONDITIONS

**Payment Schedule and Terms** – Progress payments for the fees described previously will be due monthly, based on the Design Professional's estimate of the percentage of the work complete. If payment is not received by the Design Professional within 30 calendar days of the invoice date, the Client shall pay as interest an additional charge of 1.5% of the past due amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. Failure to make payments when due shall be cause for suspension of the Design Professional's services, and the filing of a lien against the property.

**Current Hourly Rates** - An attached table, dated January 1, 2021, outlines our current hourly rates and reimbursable expenses. These rates are current until January 1, 2022, at which time they may be adjusted by the Design Professional.

**Additional Services** – Only items of work specifically called out under the Services section of this Agreement are to be performed for the specified Fees. The Design Professional will consider any items not so specified as "Additional Services" and will perform those services upon request on an hourly fee basis as outlined on the attached Hourly Rate Schedule. If any Additional Services are requested, the Design Professional shall be reimbursed for associated out-of-pocket expenses as reflected on the attached Hourly Rate Schedule.

**Term of Proposal** – It is understood that this document outlines proposed Services and Fees to be provided in relation to the Client's project, and that this offer of proposed Services and Fees remains open for sixty (60) days from the date this document is issued. If the Client does not indicate acceptance by signing and returning one copy to the Design Professional within sixty days, this document becomes null and void.

**Fee Adjustment** – It is understood that in the event this project extends over a period of more than one year from the date of this Agreement, the fees for any remaining services will be adjusted proportionately to the "all items" group of the U.S. Department of Labor's Bureau of Labor Statistics Consumer Index.

**Ownership of Documents** – All reports, plans, specifications, computer files, field data, notes and other documents and instruments prepared by the Design Professional as instruments of service shall remain the property of the Design Professional. The Design Professional shall retain all common law, statutory and other reserved rights, including the copyright thereto. Reuse for extensions of the project or for new projects shall require written permission of the Design Professional and further compensation at a rate agreed upon by both parties. Any changes made to the construction documents by the Client, or by the Client's representatives, are strictly prohibited without the knowledge and written consent of the Design Professional. The Design Professional shall be released from any liability resulting from the unauthorized alteration of construction documents. The Design Professional grants the Client the right to use the drawings for their use in publications, public meetings, planning efforts, award submittals and the right to reproduce the drawing as needed for stated uses without requesting authorization from the Design Professional.

**Jobsite Safety** – The Design Professional is not responsible for job site safety during the master planning process. The owner retains sole responsibility and liability associated with securing the site and maintaining job site safety during the planning process.

**Applicable Law** – Unless otherwise provided, this Agreement shall be governed by Tennessee state law.

**Disputes Resolution** - All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or breach thereof shall be presented to non-binding mediation, subject to the parties agreeing to a mediator.

**Termination of Services** – This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party fail to perform substantially in accordance with the terms of this Agreement through no fault of the party initiating termination. If this Agreement is terminated by the Client, the Design Professional shall be paid for services performed to the termination notice date, including reimbursable expenses due plus termination expenses. Termination expenses are defined as reimbursable expenses directly attributable to termination, plus 15 percent of the total compensation earned to the time of termination to account for the Design Professional's rescheduling adjustments, reassignment of personnel, and related costs incurred due to the termination.

**Opinion of Probable Cost** – In providing opinions of probable construction cost, the Client understands that the Design Professional has no control over costs or the price of labor, equipment, or materials, or over the contractor's method of pricing, and that the opinions of probable construction costs provided are to be made on the basis of the Design Professional's qualifications and experience. The Design Professional makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

**Limit of Liability** - In recognition of the relative risks and benefits of the project to both the Client and the Design Professional, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Design Professional and its subconsultants to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the Design Professional and its subconsultants to all those named shall not exceed **\$50,000** or the Design Professional's total fee for services rendered on this project, whichever is greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

In addition, the Client agrees to indemnify and hold the Design Professional harmless for any damage, liability or cost, including reasonable attorney's fees and defense costs, arising from any errors or omissions contained in the plans, specifications or other contract documents prepared by others. The Client agrees to extend any and all liability limitations and indemnifications provided by the Client to the Design Professional to those individuals and entities the Design Professional retains for performance of the services under this Agreement, including but not limited to the Design Professional's subconsultants and their officers, employees, heirs and assigns. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

**Betterment** - If, due to the Design Professional's error, any required item or component of the project is omitted from the Design Professional's construction documents, the Design Professional shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will the Design Professional be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.

**Contract Termination** – Upon giving the other party five (5) calendar days prior written notice, this Agreement may be terminated by either party in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If this agreement is so terminated, the Design Professional shall be paid



for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract. The Client shall pay the Design Professional in full within ten (10) calendar days of termination.



## ATTACHMENT A – Hourly Rates

### LOSE DESIGN

HOURLY RATE SCHEDULE (for use with all hourly agreements and for Additional Services)

#### Professional Services Hourly Rate

Principal/President .....	\$240.00
Executive Vice President .....	\$220.00
Vice President.....	\$200.00
Division Director .....	\$185.00
Senior Landscape Architect, PM, Architect, Engineer, and Planner .....	\$150.00
Marketing Director .....	\$135.00
Landscape Architect, Architect, Engineer, Project Manager.....	\$120.00
Certified Planner, Senior Proposal Coordinator .....	\$110.00
Land Planner, Intern Architect, Engineer in Training, BIM Specialist, GIS Specialist, Graphic Designer, Interior Designer .....	\$100.00
Technician.....	\$80.00
Marketing Coordinator, Proposal Coordinator .....	\$80.00
Administrative Assistant .....	\$65.00

#### Reimbursable Expenses

Consultants' Services	cost + 10%
Prints	cost + 10%
Long Distance Telephone Charges	cost + 10%
Postage and Shipping	cost + 10%
Mileage and Travel Expenses	cost + 10%
Copies	cost + 10%

January 1, 2021

NOTE: All the above-stated fees and expenses are to be billed monthly, and the invoices are due and payable upon receipt. Other reimbursable expenses not shown hereon will be invoiced at our cost plus 10%. These rates are current until January 1, 2022, at which time they may be adjusted by the Design Professional.



## SIGNATURE PAGE

This is an Agreement made as of December \_\_\_\_, 2020 between The City of Morristown (herein called the CLIENT), and Lose & Associates, Inc., dba Lose Design (herein called Lose Design or the DESIGN PROFESSIONAL).

- I. Client and Lose Design, for the mutual considerations hereinafter set forth agree that the services for project number 16137-4P, Heritage Park Phase 2 Visioning, shall conform to the Scope of Services.
- II. Client agrees to pay Lose Design as compensation for its services in accordance with the Fees Section in the proposal. Fees and other charges will be invoiced monthly by Lose Design. The amount of each invoice shall be due at the time of billing.
- III. The person signing this Agreement warrants he has authority to sign as, or on behalf of, the Client. If such person does not have such authority, he agrees that he is personally liable for all breaches of this contract, and that in any action against him for breach of such warranty, a reasonable attorney's fee shall be included in any judgment rendered.
- IV. When signed by both parties, this Professional Services Agreement, including the attached Scope of Services/Fees, Terms and Conditions, and Hourly Rate Schedule attached to this document, constitutes a final written expression of all terms of this Agreement and is a complete and exclusive statement of those terms. Any and all prior representations, promises, warranties, or statements by Lose Design that differ in any way from the terms of this written Agreement shall be given no force or effect. The terms of this Agreement can be modified only in writing which must be signed by both parties.

Agreed to:

Agreed to:

City of Morristown  
Client Name

Lose Design  
Lose & Associates, Inc., dba Lose Design

\_\_\_\_\_  
Signer's Name (Typed or Printed)

\_\_\_\_\_  
Signer's Name (Typed or Printed)

BY: \_\_\_\_\_  
Authorized Signature

BY: \_\_\_\_\_  
Authorized Signature

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**To Whom Should Invoices Be Directed:**

NAME: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

**City of Morristown**

Attn: Joey Barnard, Assistant City Administrator  
100 West First North Street  
Morristown, TN 37814

Dear Mr. Barnard,

Thank you for contacting Design Innovation (DIA) for a proposal for the interior improvements to City Hall in Morristown, TN.

The following proposal outlines the scope of the project, the proposed compensation and schedule.

**SCOPE OF SERVICES:**

1. The Architect will provide the necessary design and construction documents suitable for bidding and construction permitting. This proposal includes the following interior renovation items:
2. Re-carpeting in selected areas and replacing existing carpeting with luxury vinyl flooring in all other carpeted areas throughout the building.
3. Repair the water-damaged ceiling, soffit, and fascia in the atrium space.
4. Remodel the existing cashier counters to better comply with Covid 19 protection features.
5. Restore wood finish on all wood railings.
6. Incorporate the previously prepared bid drawings for the Police Department (3) new offices on main level and new armory storage room on upper level into this project for a re-bidding opportunity.
7. Replace existing wall covering on all exterior walls with wall preparations and paint finish. NOTE: It is understood that the Owner may elect to not commit to this improvement in some specific areas which shall be identified prior to bidding.
8. Replace existing wall sconce lights in the atrium fascia below the skylights with LED fixtures.
9. Clean atrium skylight glazing inside and outside.
10. Apply additional pickets to the atrium area guard railing to conform with code requirement for the 4-inch ball rule for maximum spacing of vertical pickets.
11. Recommend potential building security applications at building entrances which may include signage, access locking hardware, cameras, etc. NOTE: This task consists of concepts suggestions for Owner's considerations and does not include detailed design bid drawings.
12. Key notes and specifications shall be on the drawings indicating all improvements. NOTE: Consulting engineering services are not included in this proposal. If said services are later found to be required, the proposal shall be amended accordingly.
13. Bid documents shall be prepared indicating construction sequence phasing (departments) such to avoid loss of business use during construction. The Owner understand this shall require some temporary relocations within the building during construction.
14. Bidding assistance and pre-bid conference services are included.
15. Site visit for as-built conditions verification is included.

**EXCLUDED SERVICES:**

1. Engineering consultants are not included nor anticipated to be required for the above design services. Replacement light fixtures shall be indicated on the drawings. It is understood no electrical power or plumbing requirements are required.
2. Construction Administration services are not included but are available on an as-needed hourly basis.

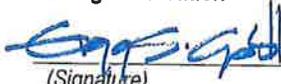
**COMPENSATION:** The services outlined above shall be provided on an hourly basis with a not-to-exceed fee of Nineteen Thousand Five Hundred Dollars & 00/100 (\$19,500.00). See attached for our standard hourly rates, typical reimbursables, and other terms and conditions for your reference.

**SCHEDULE:** The work will begin immediately upon your authorization. WE estimate approximately 3 weeks to get the bid documents ready.

We hope this proposal is clear and acceptable to you. Should you have any questions or wish to discuss any part of it, please do not hesitate to call. Upon your approval of this letter, this can act as our form of agreement for this portion of the work by signing below and returning it to our office.

Sincerely,

**Design Innovation**



*(Signature)*

Gregory S. Campbell, AIA, LEED®AP  
Executive Vice President

*(Printed Name and Title)*

**OWNER / CLIENT**

*(Signature)*

*(Date)*

*(Printed Name and Title)*

Attached: Rate Schedule and Terms and Conditions.

EC: Faris Eid, Nada Kuchinic; Design Innovation

**Exhibit -**

**Standard Terms and Conditions**

**A USE OF DOCUMENTS**

A.1 Drawings, specifications and other documents prepared by the Architect are instruments of the Architect's service and are for the Owner's use solely with respect to this Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the Project or termination of this Agreement, the Owner's right to use the instruments of service shall cease. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information or has permission from the copyright owner to transmit the information for its use on the Project.

**B TERMINATION, SUSPENSION OR ABANDONMENT**

B.1 In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven (7) days written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement.

B.2 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined herein. Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

**C MEANS AND METHODS OF COMPENSATION**

C.1 The Architect shall bill for services based on services provided generally between the first and last calendar days of each month.

C.2 Architect's standard hourly rates are subject to change without prior notice.

C.2.a Architect's standard hourly rates:

\$ hr	Abbreviation	Title
450	EW / LS	Expert Witness / Legal Support
275	PRA-LD	Principal Architect: Lead Designer
265	PRA	Principal Architect
230	VPO	Vice President of Operations
225	RRC	Registered Roof Consultant
155	SA	Senior Project Architect   Project Manager
135	PA-1	Level I: Project Architect   Project Manager
120	PA-2	Level II: Project Architect   Project Manager
105	PA-3	Level III: Project Architect   Project Manager
110	DID-1	Director of Interior Design: Lead Designer
105	IAID-1	Level I: Intern Architect, Interior Designer
90	IAID-2	Level II: Intern Architect, Interior Designer
75	IAID-3	Level III: Intern Architect, Interior Designer
115	OM/MD	Office Manager   Marketing Director
55	AA	Administrative Assistance
50	SI	Student Intern

C.3 Additional Services when pre-approved by Owner/Client, will be based on current hourly rates at time such services are rendered or mutually agreed upon lump-sum, plus consultants' fees (if required) at a 15% multiplier.

C.4 The Owner shall reimburse the Architect for reimbursable expenses incurred in the interest of the Project at a 15% multiplier:

C.4.a Transportation in connection with the Project including but not limited to mileage at U.S. government rates prevalent at the time of travel and / or rental / fuel expenses;

C.4.b Fees paid for securing approval of authorities having jurisdiction over the Project;

C.4.c Models, mock-ups, and renderings requested and/or pre-authorized by the Owner/Client.

C.4.d High resolution; Three dimensional; element(s); map(s); material representation(s) etc for use on project renderings if pre-authorized by the Project Architect

C.4.e Expense of professional liability insurance dedicated exclusively to this project of the expense in excess of that normally carried by the architect and the architect's consultants;

C.4.f Reproductions, copies, standard form documents, postage, handling, and delivery of Instruments of Service; in-house printing is charged at varied rates depending on machine and size.

C.5 Payments are due and payable upon receipt of the Architect's invoice. Amounts unpaid Fifteen (15) days after the invoice date shall bear interest from the date payment is due at the rate of One and one-half percent (1.50%) monthly, or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

C.6 At the request of the Owner, the Architect shall provide services outside the scope of work for additional compensation.

C.7 Invoices will be prepared and submitted electronically to the designated party listed under Section C.9 herein;

C.8 Any and all invoices shall be considered submitted upon receipt of automatic confirmation receipt via electronic mail (e-mail). If any portion(s) of an invoice is in dispute by the Owner/Client, the Owner/Client shall pay the undisputed portion pursuant to this provision.

C.9 Billing address/recipient name of the entity responsible on the Owner's/Client's behalf of receiving and processing the Architect's invoices shall be as follows:

Name: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

C.10 If the billing address/recipient name differs from the last billing cycle, the Owner/Client will notify the Architect's Accounting department in writing before the Fifteenth (15th) day of the month. The Owner/Client is responsible for any billing information changes. The requests, as well as questions or inquiries regarding invoices, shall be sent to the Architect's Accounts Receivables Department:

Name: Nada Kuchinic  
 Email: nkuchinic@dia-arch.com  
 Office: 865-243-8450 Fax: 865-544-3840

**D MISCELLANEOUS PROVISIONS**

D.1 This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document B101-2017 Standard Form of Agreement between Owner and Architect. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

D.2 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

D.3 The Architect shall have no responsibility for the identification, discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site.

D.4 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. In addition, the Owner shall furnish the services of a third-party inspection agency for testing mandated by adopted codes.

D.5 Liability Limitation: In recognition of the relative risks, reward and benefits of the project to both the Owner/Client and Architect, the risks have been allocated such that the Owner/Client agrees that to the fullest extent permitted by law, Architect's total liability to the Owner/Client for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this agreement from cause

**Exhibit -**

**Standard Terms and Conditions**

- or causes, shall not exceed the available amount of insurance listed in Section D.5 herein.
- D.6 Insurance Requirements: Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:
    - General Liability: \$2,000,000 General Aggregate
    - General Liability: \$1,000,000 Each Occurrence
    - Automobile Liability: \$1,000,000 Combined Single Limit
    - Workers' Compensation: \$1,000,000 Each Accident
    - Professional Liability: \$2,000,000 Aggregate Limit
    - Professional Liability: \$2,000,000 Per Claim Limit
  - D.7 Indemnity: The Owner shall indemnify, defend and hold harmless Architect, Engineer and their agents and employees from and/ against all claims, in whole or part, caused by any negligent act or omission of the Owner, anyone directly or indirectly employed by the Owner, or third parties, regardless of whether or not it is caused in part by a party indemnified herein. The requirement to indemnify, defend and hold harmless shall include, but not be limited to, all attorney's fees, damages, losses, incidental costs and expenses incurred by the Architect, Engineer, and/or their agents and employees associated with above mentioned claims.
  - D.8 Standard of Care: The standard of care for all professional services performed or furnished by Architect and Consultants under this Agreement will be the skill and care used by members of Architect and Consultants profession practicing under similar circumstances at the same time and in the same locality. Architect and Consultants makes no warranties, express or implied, under this Agreement or otherwise, in connection with Architect and Consultant's services.
  - D.9 Dispute Resolution - Mediation
  - D.9.a Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.
  - D.9.b The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable 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.
  - D.9.c 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.
  - D.10 Dispute Resolution - Litigation: If the parties do not resolve their dispute through mediation pursuant to the terms of Mediation setout above, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.
  - D.11 Claims for Consequential Damages: The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination.
  - D.12 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.
  - D.13 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.
  - D.14 To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.
  - D.15 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.
  - D.16 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.
  - D.17 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

**End of Exhibit - Terms and Conditions for Agreement between Owner and Architect.**  
**OWNER / CLIENT**

**ARCHITECT**

2020- -

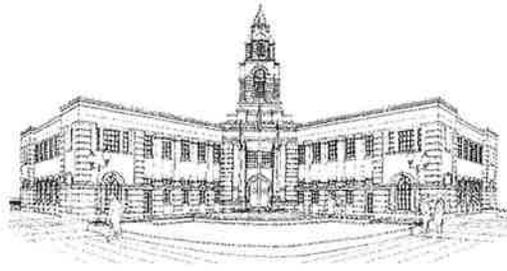
(Signature) \_\_\_\_\_ (Date) \_\_\_\_\_

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

(Printed Name and Title)

(Printed Name and Title)

<u>\$ hr</u>	<u>Abbreviation</u>	<u>Title</u>
450	EW / LS	Expert Witness / Legal Support
275	PRA-LD	Principal Architect: Lead Designer
265	PRA	Principal Architect
230	VPO	Executive Vice President
225	RRC	Registered Roof Consultant
155	SA	Senior Project Architect   Project Manager
135	PA-1	Level I: Project Architect   Project Manager
120	PA-2	Level II: Project Architect   Project Manager
105	PA-3	Level III: Project Architect   Project Manager
110	DID-1	Director of Interior Design: Lead Designer
105	IAID-1	Level I: Intern Architect, Interior Designer
90	IAID-2	Level II: Intern Architect, Interior Designer
75	IAID-3	Level III: Intern Architect, Interior Designer
115	OM/MD	Office Manager   Marketing Director
55	AA	Administrative Assistance
50	SI	Student Intern



## Morristown City Council Agenda Item Summary

**Date:** November 23, 2020

**Agenda Item:** LexiPol Contract

**Prepared by:** Joey Barnard

**Subject:** Lexipol Contract for PoliceOne Academy for the Morristown Police Department

**Background/History:** The Morristown Police Department has identified the need to utilize PoliceOne Academy, an online training system. PoliceOne Academy is a training platform that combines high quality content with time-saving features with 24/7 access to online learning, allowing officers to train when it is convenient.

**Findings/Current Activity:** There will be a one-time fee of \$495.00 for account services and set up, a prorated fee of \$2,646.00 for the first six (6) months, and a recurring annual fee of \$5,291.00 thereafter.

**Financial Impact:** Funds have been identified in the 20-21 Fiscal Year Budget for this training system.

**Action options/Recommendations:** Council's approval is sought to allow Tony Cox, City Administrator, to enter into a contract with Lexipol for PoliceOne Academy

**Attachments:** Agreement.



SUBSCRIPTION PLATFORM AGREEMENT

Customer Name: Morristown Police Department  
 Customer Address: 100 W 1stt N St POB 128  
 Attention: Morristown, Tennessee 37814  
 Lieutenant Todd King

Lexipol's Address: 2611 Internet Boulevard, Suite 100  
 Frisco, Texas 75034

Prepared By: Ken Masterson  
 Expiration Date: 11/30/2020

Contract & Proposal Valid Through: 1/1/2021 - 6/30/2022

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_

QTY	DESCRIPTION	UNIT PRICE	DISC (%)	EXTENDED
100	PoliceOne Academy Annual Rate Per User	USD 62.25	15.00	USD 2,646.00
100	PoliceOne Academy Annual Rate Per User	USD 62.25	15.00	USD 5,291.00
100	PoliceOne Academy Account Services & Setup	USD 600.00	45.00	USD 495.00
<b>Discount:</b>				USD 1,806.00
<b>TOTAL:</b>				USD 8,432.00

The foregoing pricing has been prorated for the benefit of Agency and Agency therefore agrees that they will waive the right to cancel this agreement until the end of the first renewal period.

The above subscription services, and when applicable, implementation services, shall be invoiced by Lexipol upon the execution of this Agreement.

**Notes**

18 month contract; 2 invoices

1st invoice now 60 day term total \$2,646.00; 2nd invoice 7/1/21 total \$5,786.00; December 2020 at no cost

**Discount Notes**

2020 TN Special Pricing

## SCOPE OF SERVICES

### **PoliceOne Academy**

Training is key to improving safety and effectiveness in law enforcement agency operations. PoliceOne Academy's online training platform combines high-quality content with time-saving features to help your training resources go further.

- 24/7 access to online learning, allowing your officers to train when it's convenient
- Hundreds of full-length courses and thousands of videos built for micro-learning
- Reports to help you monitor and track training completion, compliance and license renewal
- Acceptance as a Certified Training Provider and for continuing education in many states
- Ability to upload and build your own content and create personalized learning plans

## TERMS & CONDITIONS

### **Billing:**

A yearly subscription billing period begins at the effective starting date of service as stated above. A payment is due in full at the beginning of the 12-month period unless otherwise specified.

**Renewal:** Term of subscription will be automatically renewed upon contract end date using current rate card rates at the time of renewal, unless written notice of non-renewal is received at least sixty-days prior to contract end date.

**Cancellation:** Contract cannot be cancelled prior to effective contract end date. **Department Personnel Use Only:** Passwords and videos can be used by department personnel during the term of the subscription. Sharing department login access to the PoliceOne Academy or CorrectionsOne Academy or FireRescueOne Academy or EMSOne Academy or any downloaded or video content with other departments is expressly prohibited. Any violation of this policy will result in revocation of department access.

**Service Agreement:** The terms of this Order Form ("Order Form") and the Master Subscription Agreement ("MSA") located at <https://www.lexipol.com/lms-master-service-agreement/>

between the Customer and Praetorian Digital govern the use of the Praetorian Digital Academy learning management system and related services. By executing this Order Form, Customer agrees to the terms of this document and the MSA.



## Morristown City Council Agenda Item Summary

**Date:** November 20, 2020

**Agenda Item:** Approval of Bid–Demolition of Property

**Prepared by:** Joey Barnard, Assistant City Administrator

**Subject:** Demolition of Property Bid

**Background/History:** In accordance with City of Morristown ordinances, it has become necessary to demolish several dilapidated buildings within the City of Morristown. These structures were identified by the City of Morristown inspections staff to pose a potential threat to the health and welfare of the community. Hazards associated with these unfit properties will be eliminated for the safety of the citizens within the community. Additionally, demolition of these buildings will improve the appearance of the lots and in turn the overall appearance of the City. This ensures that property values of these parcels and surrounding parcels are maintained. Inspections originally identified seven (7) buildings that needed to be bid to be razed. As of the date of this summary, six (6) properties remain that need to be razed. Property owners have addressed issues with one (1) of these properties by pulling a building permit. Hearings have been held in compliance with City ordinances, and these properties will be razed once all legal proceedings have been exhausted.

**Findings/Current Activity:** The bid was advertised in the *Citizen Tribune* on October 28, 2020 and on October 30, 2020. Additionally, the bid was posted to the City of Morristown's website and through Vendor Registry, an on-line facilitation website. The submission deadline was 10:00 AM on Thursday, November 19, 2020. We received five (5) responses.

**Financial Impact:** The bids received are within the amount that has been appropriated for this purpose in the 2020-21 budget. The bid allowed for the properties to be awarded individually so that the City may take advantage of the best possible pricing. Based on the bids submitted, Down to Earth, LLC will be responsible for one (1) property totaling \$5,850.00; Minix Builders will be responsible for two (2) properties totaling \$11,525.00; and Jerry Johns Excavating will be responsible for one (1) property totaling \$4,600.00. The two (2) properties located at 1017 E 1<sup>st</sup> N Street will be rejected. These amounts could be less if the property owners take action to the structures prior to actual demolition by the entity

approved by the City of Morristown. A lien will be placed against each property to recover all costs incurred by the City of Morristown.

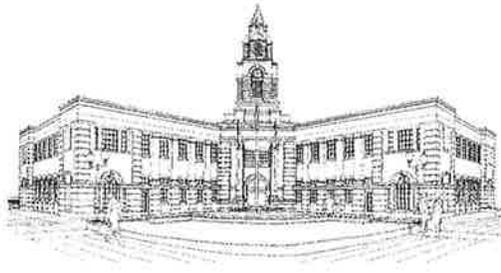
**Action options/Recommendations:** It is staffs' recommendation to approve the best and lowest bids submitted by Down to Earth, LLC for the property located at 620 W Charles Street; Minix Builders for properties located at 504 Bebbler Street and 1442 Knollwood Drive; Jerry Johns Excavating for the property located at 1449 N Easley Court; to reject the bids submitted for the properties located at 1017 E 1<sup>st</sup> N Street, and to allow the City Administrator to enter into a contract with each entity.

**Attachments:** Bid Tabulation.

**City of Morristown**  
**Demolition of Property Bid**  
**Thursday, November 19, 2020**  
**10:00 AM**

<b>Location</b>	<b>Taff &amp; Frye Co. Inc</b>	<b>Down to Earth, LLC</b>	<b>Minix Builders</b>	<b>Herrco, Inc</b>	<b>Jerry Johns Excavating</b>
1. 1449 N. Easley Court	\$ 7,400.00	\$ 5,725.00	\$ 4,675.00	\$ 7,500.00	\$ 4,600.00
2. 504 Bebbler Street	\$ 7,400.00	\$ 6,600.00	\$ 4,075.00	\$ 7,500.00	\$ 4,250.00
3. 620 W Charles Street	\$ 7,400.00	\$ 5,850.00	\$ 6,050.00	\$ 10,000.00	\$ 6,000.00
4. 156 Panda Drive	\$ -	\$ -	\$ -	\$ -	\$ -
5. 1017 E 1st N Street Apartment Units 11, 12, 13	\$ 18,450.00	\$ 7,900.00	\$ 10,500.00	\$ 21,000.00	\$ 7,350.00
6. 1017 E 1st N Street Apartment Units 6, 7, 8, 9, 10	\$ 9,450.00	\$ 13,660.00	\$ 16,025.00	\$ 50,000.00	\$ 18,000.00
7. 1442 Knollwood Drive	\$ 14,450.00	\$ 10,170.00	\$ 7,450.00	\$ 40,000.00	\$ 12,000.00
<b>Total</b>	<b>\$ 64,550.00</b>	<b>\$ 49,905.00</b>	<b>\$ 48,775.00</b>	<b>\$ 136,000.00</b>	<b>\$ 52,200.00</b>

**Total Cost to the City: \$21,975.00**



## Morristown City Council Agenda Item Summary

**Date:** November 23, 2020

**Agenda Item:** Surplus Inventory

**Prepared by:** Joey Barnard

**Subject:** Approval to declare inventory items as surplus

**Background/History:** The City of Morristown and the Public Works Department has accumulated several items in inventory that can no longer be utilized and wish to declare these items as surplus.

**Financial Impact:** It is the goal to acquire the maximum dollar amount in the most efficient manner regarding time and the needs of the department.

**Action options/Recommendations:** The City of Morristown and the Public Works Department is seeking approval to declare inventory items as surplus and to list these items on GovDeals, an online auction, or to dispose of properly. It should be noted that the Public Works Department will have additional refuse and recycle carts to surplus as they continue replacements throughout the City.

**Attachments:** Inventory List.

City of Morristown  
Surplus Inventory List

<b>Item</b>	<b>Quantity</b>
Christmas Light Pole Decoration	39
Christmas Wreath	8
Panasonic Copier Machine	16
Toner Cartridges	45
Blue Recycle Cart (approximate quantity)	1800
Green Refuse Cart (approximate quantity)	750
Computer	8
Laptop	1
Monitor	11
Brother Desktop Printer	1
Power Supply	5

# City of Morristown

*Incorporated 1855*



FINANCE OFFICE

## Memorandum

To: City Council

From: Joey Barnard, Assistant City Administrator

Date: November 23, 2020

RE: 2020 Assistant Firefighters Grant

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The City of Morristown is requesting approval to apply for the 2020 Assistant Firefighters Grant offered through the Federal Emergency Management Agency (FEMA). This is a competitive program designed to address the needs of the national fire services. This grant is 90/10 federal/ city split with the cost of federal share in the amount of \$261,810 and city's share of \$29,090 a total of \$290,900.

Application to be made to purchase 33 Self-Contained Breathing Apparatus packs (included with two air bottles and high temperature mask) along with rope rescue equipment and rope certification classes. These items would enhance the safety and proficiency in rescue situations.

November 23<sup>rd</sup>, 2020

Mr. Joey Barnard  
Assistant City Administrator  
City of Morristown  
100 West First North Street  
Morristown, TN 37814

RE: Letter of Contractor Recommendation  
MOR POD Self -Service Fueling Kiosk

Dear Mr. Barnard:

This letter shall serve to document that Michael Baker International has reviewed the bids submitted on November 20<sup>th</sup>, 2020 for the above referenced project. The three Contractors submitting a bid were RBM Company, Rebel Services, LLC., TPM, INC. The bid was opened publicly and read aloud. The bid amounts were as follows:

Contractor	Bid Amount
RBM Company	\$22,774.00
Rebel Services, LLC.	\$20,500.00
TPM, INC.	\$29,790.00

Each bid was reviewed to determine the responsiveness of the Contractor. Our conclusion is as follows:

The lowest bid by Rebel Services, LLC. was complete. No errors were found in unit pricing and extended totals. Baker has verified their license to contract in the State of Tennessee.

We hereby recommend that The City of Morristown award the construction contract to Rebel Services, LLC. in the amount of \$20,500.00.

We will begin contract preparation and distribution after the award of the contract is verified.

Sincerely,



Jason Bennett, P.E.  
Project Manager  
Michael Baker International

# BID OPENING REPORT

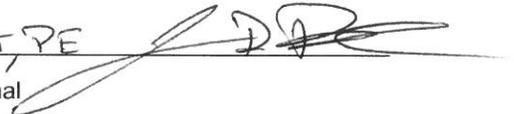
## POD SELF-SERVICE FUELING TERMINAL KIOSK

Friday, November 20, 2020

Project Number: 163488

PLAN HOLDERS NAME	BID BOND	ADDENDUM NO. 1	Base Bid	Additive Bid 1	TOTAL BID
RBM COMPANY			\$ 22,774.00		\$ 22,774.00
REBEL SERVICES, LLC			\$ 20,500.00		\$ 20,500.00
TPM, INC			\$ 29,790.00		\$ 29,790.00

I hereby certify that the above is a true and correct report of the bids as received.  
Unit prices and extensions have not been checked.

BY: JASON D. BONNETT, PE   
Michael Baker International