

**REQUEST FOR BIDS**

**RFB NO:** 21-003550

**SEND BIDS TO:**

**DATE ISSUED:** May 7, 2021

Assistant Business Manager  
Board of Directors of the City of St Louis  
Municipal Library District DBA  
St. Louis Public Library  
1415 Olive Street  
St. Louis, MO 63103  
**OR** [bids@slpl.org](mailto:bids@slpl.org)

**PRE-BID CONFERENCE DATE:** May 18, 2021 - 2:00 p.m.

**LOCATION:** Julia Davis Branch, 4415 Natural Bridge Ave., St. Louis, MO 63115

**BID DUE DATE:** June 18, 2021 by 2:00 p.m.

**ASSISTANT BUSINESS MANAGER:** Rita Kirkland

**EMAIL ADDRESS:** [rkirkland@slpl.org](mailto:rkirkland@slpl.org)

**BOARD OF DIRECTORS OF THE CITY OF ST LOUIS MUNICIPAL**  
**DISTRICT DBA ST. LOUIS PUBLIC LIBRARY**  
**RFB 21-003550 INTERIOR RENOVATION - JULIA DAVIS BRANCH**

This Bid is subject to all the terms and conditions of this Request for Bids and any Bidder representations, as well as accompanying specifications. The signature of the Bidder indicates that Bidder understands these documents and will comply with them.

**Name, Address, and Contact Information of Authorized Representative of Bidder**

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Company Name: \_\_\_\_\_

Print Address: \_\_\_\_\_  
(Address, City, State, Zip)

Print Telephone: \_\_\_\_\_

Print Email: \_\_\_\_\_

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

Bidder Is: \_\_\_\_\_ Individual \_\_\_\_\_ Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ LLC  
\_\_\_\_\_ Other (Please Describe): \_\_\_\_\_

**BOARD OF DIRECTORS OF THE CITY OF ST LOUIS MUNICIPAL**  
**DISTRICT DBA ST. LOUIS PUBLIC LIBRARY**  
**RFB 21-003550 INTERIOR RENOVATION - JULIA DAVIS BRANCH**

**REQUEST FOR BID(S) SCHEDULE**

<b>RFB Issued</b>	<b>Friday, May 7, 2021</b>
<b>Public Notification of RFB</b>	<b>Friday, May 7, 2021</b>
<b>Pre-Bid Walk Through at Julia Davis Library</b> <i>4415 Natural Bridge Ave., St. Louis, MO 63115</i>	<b>Tuesday, May 18, 2021</b>
<b>Deadline for Questions</b>	<b>Friday, June 11, 2021 at 2:00 p.m.</b>
<b>RFB Response Deadline</b>	<b>Friday, June 18, 2021 at 2:00 p.m.</b>

**BOARD OF DIRECTORS OF THE CITY OF ST LOUIS MUNICIPAL**  
**DISTRICT DBAST. LOUIS PUBLIC LIBRARY**  
**RFB 21-003550 INTERIOR RENOVATION - JULIA DAVIS BRANCH**

**PROJECT SUMMARY**

St. Louis Public Library (referred to throughout this document as "Library"), is seeking qualified bids from qualified General Contractors to furnish all labor, materials, supplies, equipment and transportation necessary for a pre-designed interior renovation at Julia Davis Library. This project will renovate 3800 square feet of interior space in the existing Julia Davis Library branch building located at 4415 Natural Bridge Ave., St. Louis, MO 63115. **The interior renovation project at Julia Davis Library is a design-bid-build project with the goal of substantial completion by November 1, 2021.**

**Background:**

Originally completed in 1993 and updated in 2002, the project area is currently being used as quiet work spaces and various reading areas and after renovation will accommodate a state-of-the-art technology center branded as ***Creative Experience***.

Julia Davis' Creative Experience will be the third installment of the digital makerspace with the first being at Central Library and the second at Barr Library. The repurposed area of the building will provide opportunities to use technology for thousands of St. Louis City residents who might otherwise not have access to hardware, software, internet service, and experts who can help these citizens to learn and complete a wide range of tasks that require these resources. This free digital makerspace offers customers of all ages the opportunity to create, learn, explore, and share using resources such as computers, 3D printers, audio-visual equipment, laser cutters, and more.

The Julia Davis renovation will feature:

- a classroom space for hands-on instruction including formal classes designed to prepare students for more developed programs and institutions (*shown in the drawings as The Digital Skills Pathway*);\*
- an open-use area equipped with computer hardware, software and peripherals, and staffed by St. Louis Public Library technology experts to offer one-on-one help for the users (*shown in the drawings as The Digital Bridge*);\*
- two recording/sound rooms complete with recording studio equipment;
- a 3-walled mixed/virtual reality space;
- and a workspace and storage space for Library employees.

*\*The Digital Bridge and Digital Skills Pathway rooms will be a flexible space that can be expanded to a larger learning environment or separated with a modular partition.*

**Scope:**

WA Architects. Inc. has completed the design of the project area will remain involved with the project to assist the Library with submittals, necessary design changes to address unexpected conditions, etc. **To request construction drawings and complete construction specifications, please contact Lindsey Erb (314-338-7578 or [lerb@slpl.org](mailto:lerb@slpl.org)).** Bidders are

expected to examine specifications, schedules, drawings, and all instructions. Failure to do so will be at Bidder's risk.

The Library requires bidders to list any and all work intended to be subcontracted as part of the bid submission, including examples of previous work and references for proposed subcontractors. The Library encourages participation from W/MBE contractors and subcontractors for this project. Please include any W/MBE certifications for the subcontractor listing.

The Library reserves the right to determine, in its sole and absolute discretion, the lowest, most qualified bid. The Library is not liable for any cost incurred by the respondent in preparing or submitting a bid, or in preparing the contract or for any finder's fee.

The Library will make the following considerations in the acceptance of bids: The quality of the materials proposed to be furnished, time for completion, the facilities possessed by the Bidder, for the prompt and satisfactory execution of the work described, the experience of the Bidder in work of similar character, financial standing, and other items will be taken into consideration as well as the cost. **To that end, the Library requires bidders to provide a completed and notarized AIA document A305-2020 with Exhibits A-D with the bid.**

The Library requests bidders provide a bid breakdown by major project components (i.e. demolition, wall finishes, floor finishes, special partitions [Hufcor 643E wall + glass partition wall], doors + hardware, acoustical treatments, electrical, lighting, equipment and furnishings, general conditions, etc.)

#### **Description of the Procurement Process:**

1. **PRE-BID WALK-THRU:** Interested bidders are encouraged but not required to attend a pre-bid walk-through of the project area within Julia Davis Library on **Tuesday, May 18, 2021 at 2:00 p.m.** Those planning to attend should email Rita Kirkland ([rkirkland@slpl.org](mailto:rkirkland@slpl.org)). Per the Library's COVID-19 policies, attendees must wear face coverings while in the building and observe social distancing guidelines.
2. **SUBMISSION OF PROPOSALS:** All proposals responding to the solicitation must be received physically or electronically by Friday, June 18, 2021 at 2:00PM. **NO EXTENSIONS WILL BE GRANTED.** See *Instructions for Bidders* for additional details.
3. **BID SELECTION** - The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria outlined below. The Library shall, in its sole and absolute discretion, select the Qualified Bid that best meets the needs of the Library. The Library reserves the right to reject and/or accept any proposals and will not be obligated to reimburse the Qualified Bidder for any cost associated with the preparation of the proposals responsive to this RFP.
  - a. **Definitions:** For the purpose of this section, the following terms shall mean:
    - (1) Responsible Bidder or Offeror. A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

(2) Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

4. **LETTER OF INTENT** - A Letter of Intent (LOI) will be issued by the Library to the selected Bidder upon the selection of a winning bid by the Library. If necessary, the Library will work with the selected Qualified Provider to solidify any outlying aspects of the project which the Library determines will best meet the needs of the Library and the community.
5. **EXECUTION OF CONSTRUCTION CONTRACT AND FINANCING DOCUMENTS** – Upon selection and approval of the winning provider by the Library will negotiate and execute a Construction Contract with the selected Bidder.

**BOARD OF DIRECTORS OF THE CITY OF ST LOUIS MUNICIPAL**  
**DISTRICT DBA ST. LOUIS PUBLIC LIBRARY**  
**RFB 21-003550 INTERIOR RENOVATION - JULIA DAVIS BRANCH**

**INSTRUCTIONS TO BIDDERS**

The St. Louis Public Library, a municipal library district, is a political subdivision of the State of Missouri, and a body corporate with all the powers and rights of like or similar corporations.

Whenever a material, article, or piece of equipment is identified by reference to manufacturer's or vendor's names, trade names, catalog numbers, etc., it is intended merely to establish a standard, and, any material, article, or equipment of other manufacturers and vendors that will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so bid(s) are, in the opinion of the St. Louis Public Library, of equal substance and function. Substitute items may be rejected at the discretion of the St. Louis Public Library.

The right is reserved by the St. Louis Public Library to cancel the RFB or to reject in whole or in part when it is for good cause and in the best interest of the St. Louis Public Library and to waive any irregularity or informality with respect to any Bid. The St. Louis Public Library reserves the right to split awards, make multiple awards and to reject all Bids.

**To request construction drawings and complete construction specifications, please contact Lindsey Erb (314-338-7578 or [lerb@slpl.org](mailto:lerb@slpl.org)).** Bidders are expected to examine specifications, schedules, drawings, and all instructions. Failure to do so will be at Bidder's risk.

**QUESTIONS:**

To preserve the integrity of the selection process, questions about the RFB should be made in writing and only directed to Rita Kirkland, Assistant Business Manager, by email ([rkirkland@slpl.org](mailto:rkirkland@slpl.org)) or to the address provided below. **Bid inquiries must be submitted in writing for the St. Louis Public Library to review no later than Friday, June 11, 2021, by 2:00 p.m.,** to allow for the St. Louis Public Library's reply prior to Bid submissions. Responses, when provided, will be included in a written amendment.

**SUBMITTING A BID:**

All Bid document pages should be initiated and dated by the company submitting the Bid.

**The deadline to submit a Bid is Friday, June 18, 2021 at 2:00 p.m.** It is the responsibility of the Bidder to deliver the Bid and/or RFB modification on or before the hour and date specified for the receipt of Bids. Bids received after the submission deadline will be rejected.

**By Email:** Complete Bids and modifications should be submitted via email to [bids@slpl.org](mailto:bids@slpl.org) with the subject line: ***"RFB 21-003550 INTERIOR RENOVATION - JULIA DAVIS BRANCH"*** for a 2:00 p.m. bid opening on 06/18/21.

**By Mail:** Complete Bids and modifications should be submitted in sealed envelopes addressed to the attention of the **Assistant Business Manager, St. Louis Public Library, 1415 Olive St., St. Louis, MO 63103** for a 2:00 p.m. bid opening at that location on 06/18/21. Bidders submitting a physical Bid should provide four complete copies of the Bid response for the St. Louis Public Library to review. The RFB number shall show on the face of the envelope:

**BOARD OF DIRECTORS OF THE CITY OF ST LOUIS MUNICIPAL**  
**DISTRICT DBA ST. LOUIS PUBLIC LIBRARY**  
**RFB 21-003550 INTERIOR RENOVATION - JULIA DAVIS BRANCH**

**BOARD OF DIRECTORS OF THE CITY OF ST LOUIS MUNICIPAL  
LIBRARY DISTRICT DBA ST. LOUIS PUBLIC LIBRARY RFB 21-003550  
INTERIOR RENOVATION – JULIA DAVIS BRANCH**

**TERMS AND CONDITIONS**

In addition to the RFB requirements elsewhere in this RFB, any Bidder that may be selected to perform the services described in the RFB and to enter into a Vendor Agreement with the Library must agree to a number of general terms and conditions. If a Bidder cannot agree to any of the stated general conditions, its Bid must clearly state the reason for any such non-compliance.

- A. **Labor and Materials.** The Bidder shall provide all labor, materials and supplies for the services to be performed under this RFB.
- B. **Form of Agreement.** The submission of a Bid constitutes the agreement of any submitting Bidder that any contract to be drawn as a result of an award to the Bidder will be prepared by counsel for the St. Louis Public Library and will be the controlling agreement. The Bidders are requested, however, to submit copies of their applicable standard contract or engagement forms for information purposes.
- C. **Compliance with Laws.** In performing under a Vendor Agreement, the selected Bidder shall comply with all applicable laws, ordinances, rules, regulations, or standards of federal, state and local governments having authority or jurisdiction over the Services or performance of the Services, or any lawful orders pertaining in any way to the Services to be provided by the St. Louis Public Library.
- D. **Out of State Bidder.** It shall be a condition to a Vendor Agreement that any out-of-state Bidder that may be selected to provide the Services shall be duly registered and qualified to do business within the State of Missouri.
- E. **Prime Contractor Responsibility.** Planned use of subcontractors in connection with a Vendor Agreement should be clearly explained and described in the Bid. The use of any subcontractor in connection with the Services shall be subject to the approval of the St. Louis Public Library, and any approved subcontractor shall agree to be bound by and subject to all terms and conditions of a Vendor Agreement between the St. Louis Public Library and the selected Bidder. The Bidder as prime contractor will be responsible and must take responsibility for the performance of all Services under a Vendor Agreement whether or not subcontractors are used.
- F. **Independent Contractor.** It is expressly understood and agreed that the selected Bidder shall be an independent contractor and not an employee of the St. Louis Public Library. A Vendor Agreement will not constitute, create, give rise to, or otherwise recognize joint venture, partnership, or formal business organization of any kind between the parties and the rights and obligations of the parties shall be only those expressly stated in a Vendor Agreement. The Bidder represents and warrants that no persons supplied by it in the performance of a Vendor Agreement are employees of the St. Louis Public Library and further agrees that no rights of the St. Louis Public Library's retirement or personnel rules accrue to such persons. The Bidder shall have complete responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation and insurance, unemployment compensation, other benefits and taxes and premiums, appurtenant thereto concerning all employees and personnel provided by Bidder in the performance of the Services under a Vendor Agreement and shall indemnify and hold the St. Louis Public Library harmless with respect thereto.
- G. **Indemnification.** Bidder shall defend, indemnify and hold harmless the St. Louis Public Library and its directors, officers, employees, representatives, agents contractors, subcontractors, licensees and successors and assigns from and against any and all claims, demands, penalties, liens, losses, fines, liabilities, damages, interest, costs, or expenses (including without limitation reasonable attorneys' fees and court costs), whether or not involving a third party claim, arising out of or in connection with: (a) the acts, error, omissions conduct, or

operations of Bidder, provided that any such claim, damage, loss, or expense is caused or is claimed or alleged to have been caused, in whole or in part, by any negligent act, whether active or passive, error, omission, conduct, or operation of any negligent act, whether active or passive, error, omissions conduct, or operation of Bidder, or any subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable; or (b) any breach of any of the representations, warranties, covenants, obligations, or duties contained in a Vendor Agreement; or (c) any violation of any applicable federal, state or local laws, rules or regulations. The indemnification obligations hereunder shall not be limited by reason of the enumeration of any insurance coverage required under a Vendor Agreement.

**H. Required Insurance Coverage.** Bidder shall secure, pay for and maintain the following insurance policies in full force and effect throughout the term of a Vendor Agreement, which policies shall protect against any loss or claim arising from or relating to a Vendor Agreement, the Services and activities, or presence at the St. Louis Public Library facilities, and any act or omission of Bidder or its employees and/or agents or subcontractors in connection with the Services provided under a Vendor Agreement, and shall cover the contractual indemnification liability assumed by the Bidder or pursuant to a Vendor Agreement.

1. Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death), personal injury, special form property damage, fire legal liability, contractual liability, independent contractors, errors and omissions, and products and completed operations, and Two Million Dollars (\$2,000,000) general aggregate. The policy shall be written on an occurrence basis. The policy shall also not have exclusions for any of Bidder's activities at Central Library. Any deductible shall be at Bidder's expense.
2. Business, automobile coverage, including coverage for owned, leased, and hired vehicles, which shall include vehicle and property (cargo) damage, and bodily injury, in an amount not less than One Million Dollars (\$1,000,000.00).
3. Worker's Compensation insurance, affording coverage in accordance with the applicable state laws covering all of Bidder's employees, and Employer's Liability coverage in accordance with the applicable state laws but no less than Five Hundred Thousand Dollars (\$500,000) each accident, Five Hundred Thousand Dollars (\$500,000) each employee and Five Hundred Thousand Dollars (\$500,000) policy limit;
4. Blanket employee dishonesty coverage with One Hundred Thousand Dollars (\$100,000) limit, with coverage extending to funds and/or property held by Bidder on behalf of St. Louis Public Library.
5. Property Insurance coverage for all materials, equipment, and other items owned, borrowed, or leased by Bidder shall be Bidder's responsibility. The St. Louis Public Library shall not be responsible for such materials, equipment, and other items owned, borrowed, or leased by Bidder.
6. Umbrella Liability insurance at not less than Five Million Dollars (\$5,000,000) limit for each occurrence providing for excess coverage over the limits and coverages prescribed above in Subsections I. (1), (2), (3), and (4) above, which such policy shall be written on an occurrence basis.

All insurance policies addressed in Subsections I. (1), (2), (4), and (6) above shall be endorsed to name the following as additional insured's:

City of St. Louis Municipal Library District and its directors, officers, employees, representatives, agents, contractors, licenses, and successors.

All insurance policies required hereunder: (1) shall be endorsed to state that the insurance is primary and not contributive to any other insurance available to the St. Louis Public Library; (2) shall provide for a waiver of rights of subrogation against the additional insurers on the part of the insurance carriers; (3) shall be written with insurance companies licensed to do business in the State of Missouri and rated no lower than A- in the most current edition of A.M. Best's Property-Casualty Key Rating Guide, and (4) shall provide for no less than thirty (30) days advance written notice to the St. Louis Public Library prior to cancellation, non-renewal or



material modification.

All insurance policies of or on behalf of the St. Louis Public Library required in a Vendor Agreement shall contain the following language: "This insurance policy does not apply to any claim or suit which is barred by the doctrines of sovereign immunity or official immunity but we will have the right and duty to defend any suit. No provision of this endorsement or of the policy, to which it is attached, shall constitute a waiver of our right, or the right of any of our employees in the course of their official duties, or the right of any insured, to assert a defense based on the doctrines of sovereign immunity or official immunity for any monetary amount whatsoever."

Bidder shall deliver to the St. Louis Public Library, prior to commencement of Services under a Vendor Agreement, Certificates of Insurance confirming the existence or issuance of all insurance policies required to be carried hereunder ("Certificates of Insurance"). If any such policy is not obtained, or if all Certificates of Insurance are not delivered to St. Louis Public Library by the aforementioned time, or if any such policies are canceled, the St. Louis Public Library shall have the right to terminate a Vendor Agreement immediately and/or deny Bidder access to St. Louis Public Library facilities. These insurance provisions are minimum requirements and shall not relieve Bidder of its indemnity, defense and hold harmless obligations.

- I. **E-Verify.** The Bidder must agree to enroll in and participate in the E-Verify Program as required by Section 285.530 of the Missouri Revised Statutes, as amended, during the hiring process for all employees hired after the date of a Vendor Agreement. The Bidder must agree to require its subcontractors who may perform work under a Vendor Agreement to certify to Bidder that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the Verify program. The Bidder must agree to maintain this certification throughout the duration of the term of a contract with a subcontractor. The St. Louis Public Library may terminate a resulting Vendor Agreement for default if the Bidder fails to cure a breach of these E-Verify provisions no later than thirty (30) days after being notified by the St. Louis Public Library of such breach. As a condition to entering into a Vendor Agreement, the Bidder must execute the E-Verify Affidavit, which shall be an exhibit to a Vendor Agreement. Such affidavit shall be in the form attached to this RFB as **Attachment C**.
- J. **Performance Uninterrupted.** Bidder shall perform the Services without interruption except as provided herein. The decision whether to postpone or excuse the performance of the Bidder shall be in sole discretion of the St. Louis Public Library.
- K. **Communications.** The Bidder shall communicate regularly or on an agreed upon schedule with the designated St. Louis Public Library management to provide updates regarding the Services performed. The Bidder shall correct all deficiencies within forty-eight (48) hours after being notified by designated St. Louis Public Library management.
- L. Bidder shall provide competent, capable, trained, experienced, and suitably qualified personnel to fulfill its obligations and provide the Services in a public St. Louis Public Library environment under a Vendor Agreement. Bidder shall supervise and coordinate the work of its employees and approved subcontractors, if any, and shall be responsible for and liable to St. Louis Public Library for the work of its employees and approved subcontractors. Any employee, representative, or approved subcontractor of Bidder who, in the opinion of the St. Louis Public Library, is unqualified, or unsuitable to perform the required services or who does not perform his or her work in a proper and skillful manner, or is disrespectful, or otherwise objectionable, shall, at the request of the St. Louis Public Library in its sole discretion, be reassigned or removed from performing any further duties related to the Services to be provided under a Vendor Agreement. In the performance of the Services under a Vendor Agreement, Bidder and its staff shall comply with the St. Louis Public Library's Policy for Appropriate Use of the Library, as may be amended from time to time.

- M. Laws & Ordinances.** Bidder shall comply with and observe all applicable federal, state and local laws, ordinances and regulations relating to its operation and Services under a Vendor Agreement at Central Library.
- N. Timing.** The successful Bidder must be ready to begin services no later than thirty (30) days after date of contract execution.
- O. Compliance with Laws.** The selected Bidder shall operate in compliance with all applicable local, state and federal laws, regulations and ordinances and in accordance with the Library's Policies and Procedures as may be amended from time to time. It is the Bidder's sole responsibility to obtain and maintain all appropriate licenses and permits for its operation in the performance of the Services.

**P. AWARD**

In accordance with the St. Louis Public Library Procurement Policy:

1. The right is reserved by the Library to cancel the RFB or to reject in whole or in part when it is for good cause and in the best interests of the Library any and all Bids and to waive any irregularity or informality with respect to any Bid. The Library reserves the right to split awards, make multiple awards and to reject all Bids.
2. Discussions may be conducted with responsible Bidders who submit Bids determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the RFB requirements. Bidders shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of Bids and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing Bidders or of any information derived from Bids submitted by competing Bidders.
3. Subject to the terms of this RFB, an award will be made by the Library to the responsible Bidder whose Bid is determined in writing to be the most advantageous to the Library, taking into consideration price and the evaluation factors set forth in the RFB. No other factors or criteria shall be used in the evaluation.
4. The selected Bidder shall enter into a Vendor Agreement consistent with this RFB.



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

## *General Conditions of the Contract for Construction*

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

THE OWNER:  
(Name, legal status and address)

THE ARCHITECT:  
(Name, legal status and address)

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

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

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

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

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

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

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

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

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

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

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

### § 1.3 Capitalization

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

### § 1.4 Interpretation

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

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

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

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

### § 1.6 Notice

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

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

### § 1.7 Digital Data Use and Transmission

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

### § 1.8 Building Information Models Use and Reliance

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

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

## ARTICLE 2 OWNER

### § 2.1 General

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

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

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in

such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

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

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

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

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

### **§ 3.4 Labor and Materials**

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

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

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

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or

equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

### § 3.6 Taxes

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

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

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

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

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

### § 3.7.4 Concealed or Unknown Conditions

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

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

### § 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;



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

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

### § 3.9 Superintendent

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

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

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

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

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

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

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

### § 3.11 Documents and Samples at the Site

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### § 3.13 Use of Site

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

### § 3.14 Cutting and Patching

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

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

### § 3.15 Cleaning Up

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

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

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

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

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

compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

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

### § 4.2 Administration of the Contract

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

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

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

### § 4.2.4 Communications

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

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

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of



other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

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

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

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

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

### § 5.3 Subcontractual Relations

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

### § 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

## § 6.2 Mutual Responsibility

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

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

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

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

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

## § 6.3 Owner’s Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

## § 7.2 Change Orders

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

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

## § 7.3 Construction Change Directives

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

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

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

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

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

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

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

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

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



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

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

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

#### § 7.4 Minor Changes in the Work

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

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

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

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

#### § 8.2 Progress and Completion

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

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

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

#### § 8.3 Delays and Extensions of Time

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

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

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

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

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

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

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

### § 9.4 Certificates for Payment

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

(3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

### § 9.5 Decisions to Withhold Certification

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

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

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

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

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

### § 9.6 Progress Payments

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

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

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

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

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

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

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

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

#### § 9.7 Failure of Payment

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

#### § 9.8 Substantial Completion

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

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

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



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

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

#### § 9.9 Partial Occupancy or Use

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

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

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

#### § 9.10 Final Completion and Final Payment

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

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

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

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

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

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

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

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

#### § 10.3 Hazardous Materials and Substances

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

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

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

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

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

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

#### § 10.4 Emergencies

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

### ARTICLE 11 INSURANCE AND BONDS

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

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

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

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### § 11.2 Owner's Insurance

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

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

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



an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### § 11.3 Waivers of Subrogation

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

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

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

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

### § 11.5 Adjustment and Settlement of Insured Loss

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

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

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract

Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## § 12.2 Correction of Work

### § 12.2.1 Before Substantial Completion

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

### § 12.2.2 After Substantial Completion

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

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

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

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

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

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

## § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

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

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in

Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

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

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

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

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

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

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

### § 13.5 Interest

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

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

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

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

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

## § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

## § 14.3 Suspension by the Owner for Convenience

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



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

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

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

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

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

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

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

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 Claims

##### § 15.1.1 Definition

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

##### § 15.1.2 Time Limits on Claims

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

##### § 15.1.3 Notice of Claims

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

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

##### § 15.1.4 Continuing Contract Performance

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

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

### § 15.1.5 Claims for Additional Cost

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

### § 15.1.6 Claims for Additional Time

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

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

### § 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

### § 15.2 Initial Decision

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

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

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

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



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

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

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

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

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

### § 15.3 Mediation

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

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

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

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

### § 15.4 Arbitration

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

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

for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

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

#### § 15.4.4 Consolidation or Joinder

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

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

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



# AIA<sup>®</sup> Document A305<sup>™</sup> – 2020

## Contractor's Qualification Statement

THE PARTIES SHOULD EXECUTE A SEPARATE CONFIDENTIALITY AGREEMENT IF THEY INTEND FOR ANY OF THE INFORMATION IN THIS A305-2020 TO BE HELD CONFIDENTIAL.

SUBMITTED BY:

(Organization name and address.)

SUBMITTED TO:

(Organization name and address.)

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

### TYPE OF WORK TYPICALLY PERFORMED

(Indicate the type of work your organization typically performs, such as general contracting, construction manager as constructor services, HVAC contracting, electrical contracting, plumbing contracting, or other.)

### THIS CONTRACTOR'S QUALIFICATION STATEMENT INCLUDES THE FOLLOWING:

(Check all that apply.)

- ☐ Exhibit A – General Information
- ☐ Exhibit B – Financial and Performance Information
- ☐ Exhibit C – Project-Specific Information
- ☐ Exhibit D – Past Project Experience
- ☐ Exhibit E – Past Project Experience (Continued)

### CONTRACTOR CERTIFICATION

The undersigned certifies under oath that the information provided in this Contractor's Qualification Statement is true and sufficiently complete so as not to be misleading.

\_\_\_\_\_  
Organization's Authorized Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

### NOTARY

State of:

County of:

Signed and sworn to before me this      day of

\_\_\_\_\_  
Notary Signature

My commission expires:



# AIA<sup>®</sup> Document A305<sup>™</sup> – 2020 Exhibit A

## General Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by  
and dated the       day of       in the year  
(In words, indicate day, month and year.)

### § A.1 ORGANIZATION

#### § A.1.1 Name and Location

§ A.1.1.1 Identify the full legal name of your organization.

This document has important  
legal consequences.

Consultation with an attorney is  
encouraged with respect to its  
completion or modification.

§ A.1.1.2 List all other names under which your organization currently does business and,  
for each name, identify jurisdictions in which it is registered to do business under that  
trade name.

§ A.1.1.3 List all prior names under which your organization has operated and, for each name, indicate the date range  
and jurisdiction in which it was used.

§ A.1.1.4 Identify the address of your organization's principal place of business and list all office locations out of which  
your organization conducts business. If your organization has multiple offices, you may attach an exhibit or refer to a  
website.

#### § A.1.2 Legal Status

§ A.1.2.1 Identify the legal status under which your organization does business, such as sole proprietorship, partnership,  
corporation, limited liability corporation, joint venture, or other.

- .1 If your organization is a corporation, identify the state in which it is incorporated, the date of  
incorporation, and its four highest-ranking corporate officers and their titles, as applicable.
- .2 If your organization is a partnership, identify its partners and its date of organization.
- .3 If your organization is individually owned, identify its owner and date of organization.
- .4 If the form of your organization is other than those listed above, describe it and identify its individual  
leaders:

§ A.1.2.2 Does your organization own, in whole or in part, any other construction-related businesses? If so, identify and describe those businesses and specify percentage of ownership.

### § A.1.3 Other Information

§ A.1.3.1 How many years has your organization been in business?

§ A.1.3.2 How many full-time employees work for your organization?

§ A.1.3.3 List your North American Industry Classification System (NAICS) codes and titles. Specify which is your primary NAICS code.

§ A.1.3.4 Indicate whether your organization is certified as a governmentally recognized special business class, such as a minority business enterprise, woman business enterprise, service disabled veteran owned small business, woman owned small business, small business in a HUBZone, or a small disadvantaged business in the 8(a) Business Development Program. For each, identify the certifying authority and indicate jurisdictions to which such certification applies.

### § A.2 EXPERIENCE

§ A.2.1 Complete Exhibit D to describe up to four projects, either completed or in progress, that are representative of your organization's experience and capabilities.

§ A.2.2 State your organization's total dollar value of work currently under contract.

§ A.2.3 Of the amount stated in Section A.2.2, state the dollar value of work that remains to be completed:

§ A.2.4 State your organization's average annual dollar value of construction work performed during the last five years.

### § A.3 CAPABILITIES

§ A.3.1 List the categories of work that your organization typically self-performs.

§ A.3.2 Identify qualities, accreditations, services, skills, or personnel that you believe differentiate your organization from others.

§ A.3.3 Does your organization provide design collaboration or pre-construction services? If so, describe those services.

§ A.3.4 Does your organization use building information modeling (BIM)? If so, describe how your organization uses BIM and identify BIM software that your organization regularly uses.



§ A.3.5 Does your organization use a project management information system? If so, identify that system.

#### § A.4 REFERENCES

§ A.4.1 Identify three client references:

*(Insert name, organization, and contact information)*

§ A.4.2 Identify three architect references:

*(Insert name, organization, and contact information)*

§ A.4.3 Identify one bank reference:

*(Insert name, organization, and contact information)*

§ A.4.4 Identify three subcontractor or other trade references:

*(Insert name, organization, and contact information)*

Sample



# AIA<sup>®</sup> Document A305<sup>™</sup> – 2020 Exhibit B

## Financial and Performance Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by  
and dated the       day of       in the year  
(In words, indicate day, month and year.)

### § B.1 FINANCIAL

#### § B.1.1 Federal tax identification number:

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

§ B.1.2 Attach financial statements for the last three years prepared in accordance with Generally Accepted Accounting Principles, including your organization's latest balance sheet and income statement. Also, indicate the name and contact information of the firm that prepared each financial statement.

§ B.1.3 Has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, been the subject of any bankruptcy proceeding within the last ten years?

§ B.1.4 Identify your organization's preferred credit rating agency and identification information.

(Identify rating agency, such as Dun and Bradstreet or Equifax, and insert your organization's identification number or other method of searching your organization's credit rating with such agency.)

### § B.2 DISPUTES AND DISCIPLINARY ACTIONS

§ B.2.1 Are there any pending or outstanding judgments, arbitration proceedings, bond claims, or lawsuits against your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, or any of the individuals listed in Exhibit A, Section 1.2, in which the amount in dispute is more than \$75,000?

(If the answer is yes, provide an explanation.)

§ B.2.2 In the last five years, has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management:

(If the answer to any of the questions below is yes, provide an explanation.)

- .1 failed to complete work awarded to it?
- .2 been terminated for any reason except for an owners' convenience?
- .3 had any judgments, settlements, or awards pertaining to a construction project in which your organization was responsible for more than \$75,000?

- .4 filed any lawsuits or requested arbitration regarding a construction project?

§ B.2.3 In the last five years, has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management; or any of the individuals listed in Exhibit A Section 1.2:

*(If the answer to any of the questions below is yes, provide an explanation.)*

- .1 been convicted of, or indicted for, a business-related crime?
- .2 had any business or professional license subjected to disciplinary action?
- .3 been penalized or fined by a state or federal environmental agency?

Sample



# AIA<sup>®</sup> Document A305<sup>™</sup> – 2020 Exhibit C

## *Project Specific Information*

This Exhibit is part of the Contractor's Qualification Statement, submitted by  
and dated the       day of       in the year  
(In words, indicate day, month and year.)

### PROJECT:

(Name and location or address.)

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

### CONTRACTOR'S PROJECT OFFICE:

(Identify the office out of which the contractor proposes to perform the work for the  
Project.)

### TYPE OF WORK SOUGHT

(Indicate the type of work you are seeking for this Project, such as general contracting, construction manager as  
constructor, design-build, HVAC subcontracting, electrical subcontracting, plumbing subcontracting, etc.)

### CONFLICT OF INTEREST

Describe any conflict of interest your organization, its parent, or a subsidiary, affiliate, or other entity having common  
ownership or management, or any of the individuals listed in Exhibit A Section 1.2, may have regarding this Project.

### § C.1 PERFORMANCE OF THE WORK

§ C.1.1 When was the Contractor's Project Office established?

§ C.1.2 How many full-time field and office staff are respectively employed at the Contractor's Project Office?

§ C.1.3 List the business license and contractor license or registration numbers for the Contractor's Project Office that  
pertain to the Project.

§ C.1.4 Identify key personnel from your organization who will be meaningfully involved with work on this Project and  
indicate (1) their position on the Project team, (2) their office location, (3) their expertise and experience, and (4)  
projects similar to the Project on which they have worked.

§ C.1.5 Identify portions of work that you intend to self-perform on this Project.

§ C.1.6 To the extent known, list the subcontractors you intend to use for major portions of work on the Project.

## § C.2 EXPERIENCE RELATED TO THE PROJECT

§ C.2.1 Complete Exhibit D to describe up to four projects performed by the Contractor's Project Office, either completed or in progress, that are relevant to this Project, such as projects in a similar geographic area or of similar project type. If you have already completed Exhibit D, but want to provide further examples of projects that are relevant to this Project, you may complete Exhibit E.

§ C.2.2 State the total dollar value of work currently under contract at the Contractor's Project Office:

§ C.2.3 Of the amount stated in Section C.2.2, state the dollar value of work that remains to be completed:

§ C.2.4 State the average annual dollar value of construction work performed by the Contractor's Project Office during the last five years.

§ C.2.5 List the total number of projects the Contractor's Project Office has completed in the last five years and state the dollar value of the largest contract the Contractor's Project Office has completed during that time.

## § C.3 SAFETY PROGRAM AND RECORD

§ C.3.1 Does the Contractor's Project Office have a written safety program?

§ C.3.2 List all safety-related citations and penalties the Contractor's Project Office has received in the last three years.

§ C.3.3 Attach the Contractor's Project Office's OSHA 300a Summary of Work-Related Injuries and Illnesses form for the last three years.

§ C.3.4 Attach a copy of your insurance agent's verification letter for your organization's current workers' compensation experience modification rate and rates for the last three years.

## § C.4 INSURANCE

§ C.4.1 Attach current certificates of insurance for your commercial general liability policy, umbrella insurance policy, and professional liability insurance policy, if any. Identify deductibles or self-insured retentions for your commercial general liability policy.

§ C.4.2 If requested, will your organization be able to provide property insurance for the Project written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis?

§ C.4.3 Does your commercial general liability policy contain any exclusions or restrictions of coverage that are prohibited in AIA Document A101-2017, Exhibit A, Insurance A.3.2.2.2? If so, identify.



§ C.5 SURETY

§ C.5.1 If requested, will your organization be able to provide a performance and payment bond for this Project?

§ C.5.2 Surety company name:

§ C.5.3 Surety agent name and contact information:

§ C.5.4 Total bonding capacity:

§ C.5.5 Available bonding capacity as of the date of this qualification statement:

Sample



# AIA<sup>®</sup> Document A305<sup>™</sup> – 2020 Exhibit D

## Contractor's Past Project Experience

	1	2	3	4
PROJECT NAME				
PROJECT LOCATION				
PROJECT TYPE				
OWNER				
ARCHITECT				
CONTRACTOR'S PROJECT EXECUTIVE				
KEY PERSONNEL (include titles)				
PROJECT DETAILS	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work
PROJECT DELIVERY METHOD	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:
SUSTAINABILITY CERTIFICATIONS				

**BID/PROPOSAL FOR A STIPULATED SUM**

**CONTRACT**

Date: \_\_\_\_\_

Bid/Proposal of: \_\_\_\_\_ (hereinafter called Bidder), a corporation\* organized and existing under the laws of the state of \_\_\_\_\_ a partnership\* consisting of an individual\* trading as \_\_\_\_\_ a joint venture\* consisting of \_\_\_\_\_

\*Insert Corporation(s), partnerships or individual, as applicable.

TO: Saint Louis Public Library  
Purchasing Department  
1415 Olive St.  
St. Louis, MO 63103  
Attn: Rita Kirkland

The Bidder, in compliance with the advertisements/invitation for bid's for construction work in accordance with the Drawings and Specifications prepared by WA Architects, Inc, entitled Interior Renovation - Julia Davis Branch Library, dated May 7, 2021, having carefully examined the Drawings and Specifications with related documents and site of the proposed work and being familiar with all, the conditions pertaining to the construction of the proposed project, including the availability of materials and labor, hereby proposes to furnish all labor, materials and supplies to construct, the project in accordance with Contract Documents, within the time set forth herein at the prices stated below. These prices are to cover all expenses, including taxes, incurred in performing the work required under the Contract Documents, of which this Bid is a part.

Bidder acknowledges receipt of the following addenda:

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_ dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_ dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

**PROJECT COMPLETION**

**A.** Time is of the essence, assuming receipt of unsigned Contract and Performance Bond from Owner no later than we hereby agree to Substantially complete the project within\_\_\_\_\_days.

**B. Contract Period**

The Contract begins on the day the Contractor receives the unsigned Contract and Performance-Payment Bond. The Bidder agrees to complete the project within the time specified in the Contract, from receipt of the aforementioned documents. Ten (10) calendar days shall be allocated in the construction schedule for receiving the aforementioned documents from the Contractor.

**C. Commencement**

Contractor agrees to commence work on this project after the Notice to Proceed is issued within seven (7) calendar days after the owner receives the properly prepared and executed Contract Documents listed in the previous paragraph B, above.

**MBE/WBE WORKFORCE CONTENT GOALS**

**The Library is committed to the principles of diversity and inclusion.**  
The undersigned proposes to perform the work with the following MBE/WBE Participation levels:

MBE:\_\_\_\_\_%

WBE:\_\_\_\_\_%

## **SUBCONTRACTOR LIST**

The Bidder hereby certifies that the following subcontractors will be used in the performance of Work:

**NOTE:** Failure to list subcontractors for each category of work may be grounds for rejection of bid. List by name, city and state of the designated subcontractor, for each category of work. If work within a category will be performed by more than one subcontractor, the bidder must provide the name, city and state of each, and specify the portion of work to be done by each. If acceptance/non-acceptance of alternates will affect the designation of the subcontractor, the bidder must provide that information, for each affected category, with this bid form. If the Bidder intends to perform any designated subcontract work with the use of his own employees, the bidder shall list their own name, city and state.



### SUBCONTRACTOR'S LIST

### Work to be Performed

Name

City/State

[illegible]

#### **BIDDERS ACKNOWLEDGEMENTS**

- A. The Bidder declares that he has had an opportunity to examine the site of work and he has examined the Contract Documents therefore; that he has carefully prepared his Bid upon the basis thereof, that he has carefully examined and checked this Bid and the materials, equipment, and labor required thereunder, the cost thereof, hereby states that the amount, or amounts set forth in this Bid, is or in the Bidder's computations upon which this Bid is based, and the Bidder agrees that he will make no claim for reformation, modifications, revisions, or correction of this Bid after the scheduled closing time for the receipt of Bids.
- B. In submitting this Bid, it is agreed that it may not be withdrawn for a period of ninety (90) days after the scheduled closing time for receipt of Bids.
- C. The Bidder understands that the St. Louis Public Library reserves the right to reject any or all Bids and to waive any informalities in the bidding.
- D. **Accompanying the Bid is the Contractor's Qualification Statement (AIA Document A305-2020, with Exhibits A-D). Failure of Bidder to submit the completed document with the Bid may void the Bid. The owner does not maintain Contractor's Qualification Statement on file.**

## **BIDDER'S CERTIFICATE**

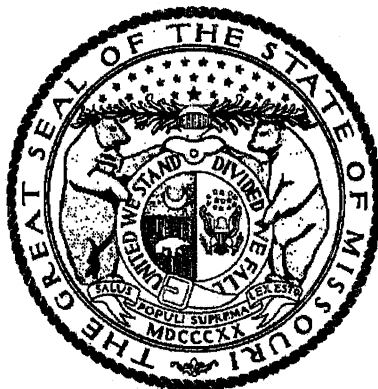
**The Bidder hereby certifies:**

- A. That this bid/proposal is genuine and is not made in the interest or on behalf of any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association or corporation.
- B. He/she has not directly or indirectly induced or solicited any other Bidder to put in a false bid/proposal.
- C. He/she has not solicited or induced any person, firm or corporation to refrain from bidding.
- D. He/she has not sought by collusion or otherwise to obtain for himself any advantage over any other Bidder or over the owner.
- E. He/she will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin in connection with the performance of work.

# Missouri

## Division of Labor Standards

### WAGE AND HOUR SECTION



MICHAEL L. PARSON, Governor

## Annual Wage Order No. 27

Section 096  
**ST. LOUIS CITY**

In accordance with Section 290.262 RSMo 2000, within thirty (30) days after a certified copy of this Annual Wage Order has been filed with the Secretary of State as indicated below, any person who may be affected by this Annual Wage Order may object by filing an objection in triplicate with the Labor and Industrial Relations Commission, P.O. Box 599, Jefferson City, MO 65102-0599. Such objections must set forth in writing the specific grounds of objection. Each objection shall certify that a copy has been furnished to the Division of Labor Standards, P.O. Box 449, Jefferson City, MO 65102-0449 pursuant to 8 CSR 20-5.010(1). A certified copy of the Annual Wage Order has been filed with the Secretary of State of Missouri.

Original Signed by

Taylor Burks, Director  
Division of Labor Standards

Filed With Secretary of State: March 10, 2020

Last Date Objections May Be Filed: April 9, 2020

Prepared by Missouri Department of Labor and Industrial Relations

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Asbestos Worker	\$62.61
Boilermaker	*\$36.28
<b>Bricklayer</b>	<b>\$58.86</b>
<b>Carpenter</b>	<b>\$56.92</b>
Lather	
Linoleum Layer	
Millwright	
Pile Driver	
Cement Mason	\$53.01
Plasterer	
<b>Communications Technician</b>	<b>\$58.27</b>
<b>Electrician (Inside Wireman)</b>	<b>\$65.57</b>
Electrician Outside Lineman	\$65.61
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
Elevator Constructor	*\$36.28
<b>Glazier</b>	<b>\$62.30</b>
Ironworker	\$61.60
<b>Laborer</b>	<b>\$48.42</b>
General Laborer	
First Semi-Skilled	
Second Semi-Skilled	
<b>Mason</b>	<b>\$52.10</b>
Marble Mason	
Marble Finisher	
Terrazzo Worker	
Terrazzo Finisher	
Tile Setter	
Tile Finisher	
Operating Engineer	\$61.61
Group I	
Group II	
Group III	
Group III-A	
Group IV	
Group V	
Painter	\$49.04
<b>Plumber</b>	<b>\$70.16</b>
Pipe Fitter	
<b>Roofer</b>	<b>\$51.98</b>
<b>Sheet Metal Worker</b>	<b>\$67.29</b>
<b>Sprinkler Fitter</b>	<b>\$71.23</b>
Truck Driver	*\$36.28
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

\*The Division of Labor Standards received less than 1,000 reportable hours for this occupational title.  
Public works contracting minimum wage is established for this occupational title using data provided by Missouri  
Economic Research and Information Center.

\*\*The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title.

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Carpenter	\$57.62
Millwright	
Pile Driver	
Electrician (Outside Lineman)	\$65.61
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
<b>Laborer</b>	<b>\$49.86</b>
General Laborer	
Skilled Laborer	
<b>Operating Engineer</b>	<b>\$62.39</b>
Group I	
Group II	
Group III	
Group IV	
<b>Truck Driver</b>	<b>\$42.21</b>
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

Use Heavy Construction Rates on Highway and Heavy construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(3).

Use Building Construction Rates on Building construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(2).

If a worker is performing work on a heavy construction project within an occupational title that is not listed on the Heavy Construction Rate Sheet, use the rate for that occupational title as shown on the Building Construction Rate Sheet.

\*The Division of Labor Standards received less than 1,000 reportable hours for this occupational title. Public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center.

\*\*The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title.



# OVERTIME and HOLIDAYS

## OVERTIME

For all work performed on a Sunday or a holiday, not less than twice (2x) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

For all overtime work performed, not less than one and one-half (1½) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work or contractual obligation. For purposes of this subdivision, "**overtime work**" shall include work that exceeds ten hours in one day and work in excess of forty hours in one calendar week; and

A thirty-minute lunch period on each calendar day shall be allowed for each worker on a public works project, provided that such time shall not be considered as time worked.

## HOLIDAYS

January First;  
The last Monday in May;  
July Fourth;  
The first Monday in September;  
November Eleventh;  
The fourth Thursday in November; and  
December Twenty-Fifth;

If any holiday falls on a Sunday, the following Monday shall be considered a holiday.



MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
**AFFIDAVIT  
COMPLIANCE WITH THE PREVAILING WAGE LAW**

I, \_\_\_\_\_, upon being duly sworn upon my oath state that: (1) I am the  
(Name)  
\_\_\_\_\_ of \_\_\_\_\_; (2) all requirements of  
(Title) (Name of Company)  
§§ 290.210 to 290.340, RSMo, pertaining to the payment of wages to workers employed on public works projects  
have been fully satisfied with regard to this company's work on \_\_\_\_\_;  
(Name of Project)

(3) I have reviewed and am familiar with the prevailing wage rules in 8 CSR 30-3.010 to 8 CSR 30-3.060; (4) based upon my knowledge of these rules, including the occupational titles set out in 8 CSR 30-3.060, I have completed full and accurate records clearly indicating (a) the names, occupations, and crafts of every worker employed by this company in connection with this project together with an accurate record of the number of hours worked by each worker and the actual wages paid for each class or type of work performed, (b) the payroll deductions that have been made for each worker, and (c) the amounts paid to provide fringe benefits, if any, for each worker; (5) the amounts paid to provide fringe benefits, if any, were irrevocably made to a fund, plan, or program on behalf of the workers; (6) these payroll records are kept and have been provided for inspection to the authorized representative of the contracting public body and will be available, as often as may be necessary, to such body and the Missouri Department of Labor and Industrial Relations; (7) such records shall not be destroyed or removed from the state for one year following the completion of this company's work on this project; and (8) there has been no exception to the full and complete compliance with the provisions and requirements of Annual Wage Order No. \_\_\_\_\_ Section \_\_\_\_\_ issued by the Missouri Division of Labor Standards and applicable to this project located in \_\_\_\_\_ County, Missouri, and completed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

The matters stated herein are true to the best of my information, knowledge, and belief. I acknowledge that the falsification of any information set out above may subject me to criminal prosecution pursuant to §§290.340, 570.090, 575.040, 575.050, or 575.060, RSMo.

\_\_\_\_\_  
Signature

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

My commission expires \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Receipt by Authorized Public Representative

**BOARD OF DIRECTORS OF THE CITY OF ST LOUIS MUNICIPAL  
DISTRICT DBAST. LOUIS PUBLIC LIBRARY  
RFB 21-003550 INTERIOR RENOVATION - JULIA DAVIS BRANCH**

**SAMPLE OWNER’S CONTRACT**

This agreement made this \_\_\_\_ day of \_\_\_\_\_, 2021, between Board of Directors of The City of St. Louis Municipal Library District, hereinafter called the “The St. Louis Public Library”, and, \_\_\_\_\_, herein called the “Contractor”.

The Project:

The Architect:

General Description of Work:

**1. Contract Documents**

1.1 The contract documents for this contract consist of this agreement, and any other exhibits attached hereto, the bidding documents for Bid Project 21-003550, all drawings, specifications and addenda issued by the St. Louis Public Library prior to execution of this contract, the project schedule as may be amended from time to time, and any subsequent modifications or revisions to any of the above documents. Quoted MBE/WBE/ participation levels:

MBE PARTICIPATION:  
WBE: PARTICIPATION

1.2 All of the above contract documents from this contract are fully incorporated herein.

**2. Scope of Work**

2.1 The St. Louis Public Library employs the Contractor, as an independent Contractor, to perform the part of the work on the project as set forth in the contract documents”.

2.2 The Contractor agrees to perform the contract work under the direction of the St. Louis Public Library, and any other specified representative of the St. Louis Public Library. The Contractor agrees to provide and pay for all labor, regardless of craft or jurisdiction, materials, tools, supplies and equipment, except as otherwise provided herein, to perform the contract work in strict conformity with the contract documents.

2.3 The contract work includes:

(a) that shown on any of the contract documents as if called for or shown on all; and  
(b) all things reasonably implied or customarily provided in the Contractor’s line of work or necessary to complete such work for inspection and approval under the contract documents. Contractor will furnish all necessary tools, equipment, scaffolding, protection and competent supervision and shall execute all work in the best and most workman-like manner by qualified, careful, and efficient workers who shall be satisfactory to the St. Louis Public Library.

**3. Contract Sum and Payments**

3.1 In consideration of the complete and timely performance of all contract work, the St. Louis Public Library shall pay to the Contractor the sum of (\_\_\_\_\_), subject to additions, deductions and conditions as stated herein. The St. Louis Public St. Louis Public Library's payment terms are net 30 days.

3.2 Payments shall be made in installments as the work progresses unless Contractor is in default. By the 10<sup>th</sup> day of each month, the Contractor shall submit to the St. Louis Public Library a written requisition for payment in approved form showing the proportionate value of the work performed and completed to date from which shall be deducted: (a) a retainage of ten (10) percent of such proportionate value, and (b) the aggregate of retainages from all prior requisitioned progress payments

3.3 Progress payments may be withheld in whole or in such an amount as exclusively determined by the St. Louis Public Library on account of: (a) defective materials or work, (b) claims or liens, or any notice thereof, whether true or spurious, (c) any breach by Contractor of any provision or obligation of this contract, (d) a reasonable doubt that the contract work can be completed for the balance then unpaid, or (e) a reasonable doubt that Contractor, for any reason, is able to complete the contract work. If the foregoing causes are remedied or adjusted to the St. Louis Public Library's satisfaction, the withheld payments shall be promptly made. If the said causes or not so remedied or adjusted, the St. Louis Public Library may remedy the same for the Contractor's account.

3.4 The quantities of work performed and materials furnished as established by the St. Louis Public Library or the St. Louis Public Library's representative shall constitute the basis for computation of the payment to Contractor. Payments made on account of materials not incorporated in the work, but delivered and suitably stored, shall be in accordance with the contract documents. Payment is not conclusive of full performance nor should payment be considered to be acceptance of defective work or improper materials.

3.5 If requested, Contractor shall submit to the St. Louis Public Library a schedule of values of the parts of the contract work performed, aggregating the contract sum and supported by such evidence as to correctness as St. Louis Public Library may direct. The schedule shall be itemized by general areas, specific large pieces of equipment, and/or another similar method which shall accurately indicate the value of work performed or services rendered.

3.6 Contractor will provide an affidavit to the St. Louis Public Library showing that its labor, materials and other bills have been paid, and release or lien waivers, in form satisfactory to the St. Louis Public Library. If it appears that labor, material or other bills incurred in the performance of the contract work are not being paid, the St. Louis Public Library may take such steps it deems necessary to ensure that the progress payments will be utilized to pay such bills.

3.7 Final payment shall be made to Contractor after completion of contract work and acceptance by the St. Louis Public Library and that all labor (including customary fringe benefits and payments due under collective bargaining agreements) and all subcontractors and materialmen have been paid to date and are waiving their lien rights upon the final payment of a specific balance due. Final payment shall constitute a waiver of all claims by Contractor.

3.8 In the event of any breach by Contractor of this agreement, or in the event of the assertion by others of any claim or lien against the St. Louis Public Library or the St. Louis Public Library's surety (if any), which claim or lien arises out of Contractors performance, the St. Louis Public Library may, but is

not required to, retain out of any payments due to Contractor an amount sufficient to protect the St. Louis Public Library from any and all loss, damage or expense therefrom, until the claim or lien has been adjusted by the Contractor to the satisfaction of the St. Louis Public Library .

3.9 The contract price includes all applicable local, state and federal taxes, license fees and permit charges based upon or measured by the work to be done hereunder, labor to be performed, materials to be furnished, and services to be rendered. Said contract price shall not include any sales taxes because the St. Louis Public Library is a tax exempt institution.

3.10 In order to take advantage of its sales tax exempt status, the St. Louis Public Library shall furnish to the Contractor a tax exemption certificate authorizing purchases for all materials and equipment required in conjunction with the project. The General Contractor shall furnish the certificate to all material suppliers as authorization to purchase on behalf of the St. Louis Public Library, all tangible property and materials to be incorporated into or consumed in the construction of the project and no other on a tax-exempt basis. This exemption certificate does not allow Contractor to purchase machinery, equipment or tools, used in fulfilling this contract, tax exempt. Itemized invoices indicating tax-exempt purchases will be submitted to the Library, monthly, with the certified payroll.

#### **4. Prosecution of Work**

4.1 The Contractor agrees, within fifteen (15) calendar days after notification by the St. Louis Public Library, to commence in the field, at such points as the St. Louis Public Library may designate, the contract work and to continue diligently in its performance in accordance with the project schedule. Time is of the essence of this contract.

4.2 The Contractor shall promptly provide the St. Louis Public Library with scheduling information when requested. The St. Louis Public Library and the Architect shall review the project schedule and may revise such schedule as necessary as the work progresses. Contractor shall comply with instructions given by the St. Louis Public Library, including any to suspend, delay or accelerate the contract work.

4.3 Contractor shall furnish the St. Louis Public Library with its list of proposed subcontractors, equipment and material suppliers, along with the description of the corresponding item of work. Contractor shall bind its subcontractors, equipment and material suppliers to the requirements set forth in this agreement, the schedule of work and the contract documents.

In those instances where any subcontractor or supplier fails to submit shop drawings, product data or samples which meet the specifications, the additional cost (price increases and other costs due to delays in placing order) to furnish the specified equipment and/or material shall be borne by Contractor. Contractor shall also bear any extra cost incurred by the St. Louis Public Library due to this failure.

4.4 Contractor shall prosecute Contractor's work in a prompt and diligent manner in accordance with the schedule of work without hindering the work of any other contractor or subcontractor. If work or property of any other is hindered, delayed or damaged by Contractor, Contractor will pay for all costs and damages incurred by such other party and will cause all such damage to be corrected to the satisfaction of and without cost to the St. Louis Public Library.

4.5 Contractor shall be responsible for and will prepare for performance of Contractor's work, including without limitation thereto, shop drawings, samples and tests, field dimensions, determination of labor requirements and ordering of materials as required to meet the schedule of work. Contractor shall submit to St. Louis Public Library review and approval all shop drawings, product data, samples and tests required by the contract documents.

4.6 Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the project site during the progress of the work. The superintendent shall be satisfactory to the St. Louis Public Library and shall not be changed except with the consent of the St. Louis Public Library, unless the superintendent ceases to be in the Contractor's employ. The superintendent shall attend all coordination, scheduling, progress and safety meetings where Contractor's work is involved or as

required by St. Louis Public Library. The St. Louis Public Library may, in writing, require Contractor to remove from the contract work any employees deemed by the St. Louis Public Library to be incompetent, habitually careless, grossly insubordinate or otherwise objectionable.

4.7 The St. Louis Public Library or its representatives will furnish basic control points and bench marks. Any further layout necessary for completion of the Contract is the responsibility of Contractor. Contractor shall lay out its work from control points supplied by the St. Louis Public Library and be responsible for its accuracy and the placement of all inserts, grounds, etc. as required to complete the work. Contractor shall be responsible for repair of such items that are improperly placed if it can be shown that original control work was accurately performed.

4.8 Contractor shall be required, as necessary, to meet with the St. Louis Public Library and the Architect to review and develop a construction schedule for the project.

4.9 Contractor shall be required to develop and submit to the St. Louis Public Library for their review and approval a safety program to be followed during the performance of the Contractor's work.

4.10 Contractor will be responsible for supplying its own crew with drinking water, ice, and cups.

4.11 If the St. Louis Public Library agrees at its sole option to allow Contractor to use the St. Louis Public Library's tools or equipment, Contractor shall do so at its sole risk and shall hold the St. Louis Public Library harmless from any claims and/or expenses, including but not limited to attorney's fees and court costs, resulting from use of such tools and equipment by Contractor. The St. Louis Public Library shall be reasonably compensated by Contractor for such tools and equipment. In the event that one or more of St. Louis Public Library's personnel operate such tools or equipment for Contractor, said personnel shall be employees of Contractor for all purposes while so operating said tools or equipment, whether or not such personnel are placed on Contractor's payroll. Contractor agrees in all cases to provide proper and expert supervision to control, direct and be responsible for all acts and omissions of such borrowed personnel. Should Contractor fail to so compensate such personnel by placing them on its payroll, the St. Louis Public Library may compensate such personnel on behalf of and for the Contractor and deduct such sum from any amounts due to the Contractor.

4.12 Contractor shall furnish progress reports of Contractor's work as mutually agreed including the progress of materials or equipment to be provided under this agreement that may be in the course of preparation of manufacture.

4.13 Contractor shall maintain at the site, one copy of all drawings, specifications, addenda, approved shop drawings, change orders and modifications, in good order and marked currently to record all changes made during construction relating to its work.

4.14 Contractor shall submit a final set of record drawings and operating and maintenance manuals upon completion of the project, receipt by the St. Louis Public Library, of these materials is required prior to processing Contractor's final payment.

4.15 Contractor shall cooperate with the St. Louis Public Library, and other contractors and subcontractors whose work may interfere with Contractor's work and participate in the preparation of coordinated drawings and work schedules in areas of congestion, specifically noting and advising St. Louis Public Library of any interference by other contractors or subcontractors.

4.16 Contractor shall keep the building and premises reasonably clean of debris resulting from the Contractor's work. If Contractor fails to comply with this paragraph within twenty-four (24) hours after receipt of written or verbal notice of non-compliance from the St. Louis Public Library, the St. Louis Public Library may perform such necessary clean-up and deduct the cost from any amounts due



Contractor.

4.17 Contractor shall give adequate notices pertaining to the work of the Contractor to proper authorities and secure and pay for all necessary licenses, permits, governmental fees and inspections to carry out Contractor's work and shall furnish copy of said permits, licenses and inspection reports to Library prior to start of Contractor's work.

4.18 Contractor shall comply with all federal, state and local laws, rules, regulations and orders, Social security laws and unemployment compensation laws, worker's compensation laws and safety laws insofar as applicable to the performance of this agreement. In this regard, Contractor shall be required to maintain certified payroll records for its employees and for its subcontractor's employees in accordance with the requirements of the Davis-Bacon Act and to provide the St. Louis Public Library with said certified payroll records.

4.19 Contractor will not assign this agreement nor subcontract the whole or any part of the work to hereunder without the written consent of the St. Louis Public Library, with the exception of those subcontractors listed by the contractor and furnished to the St. Louis Public Library as provided herein.

4.20 In the case of minor repairs to newly finished interior surfaces (not covered by property insurance) the cost of said repairs for which responsibility cannot be ascertained shall be prorated to all subcontractors in proportion to manpower employed during the period when damage occurred.

4.21 Every part of Contractor's work shall be executed in strict accordance with the agreement in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds, and all materials used in the Contractor's work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the contract work, and shall be new, except such materials as may be expressly provided in the agreement to be otherwise.

4.22 Every part of the Contractor's work shall be subject to review and inspection by the St. Louis Public Library and Architect as to quality and quantity, to determine that said work is in accordance with contract documents, that the specified materials and amount of materials have been utilized, and that said materials and work are consistent with the contract documents.

4.23 Contractor shall provide the St. Louis Public Library with copies of all guarantees, warranties, operation manuals, maintenance manuals, parts lists, etc. from the manufacturers of the materials and equipment used in the project.

4.24 In the event the scope of the Contractor's work includes installation of materials or equipment furnished by others, it shall be the responsibility of Contractor to examine the items so

provided and thereupon handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to acts of the contractor shall be deducted from any amounts due or to become due Contractor.

4.25 No substitutions shall be made in Contractor's work unless permitted in the contract and only then upon Contractor's first receiving all approvals required under the contract for substitutions. Contractor shall indemnify the St. Louis Public Library for any increase costs incurred by the St. Louis Public Library as a result of such substitutions, regardless whether Contractor has obtained approval thereof.

## **5. Insurance**

5.1 Prior to starting the contract work, Contractor shall procure and maintain in force, worker's compensation insurance, employer's liability insurance in full compliance with the laws of the state of Missouri, comprehensive general liability insurance with contractual coverage and automobile liability

insurance, including owned, non-owned and hired automobile coverage and such other insurance, to the extent required by the contract documents for Contractor's work.

5.2 Contractor's Comprehensive General and Automobile Liability Insurance, as required by paragraph 5.1 shall be written for not less than limits of liability as follows: (a) Contractor's comprehensive general liability insurance shall insure against claims for bodily injury, death, and property damage occurring and arising out of and as a result of services, articles and materials performed or delivered hereunder on an occurrence basis with a combined single limit of one million dollars (\$1,000,000); and (b) Contractor's automobile liability insurance shall insure against claims for bodily injury, death and property damage occurring and arising out of and as a result of services performed hereunder with a combined single limit of one million dollars (\$1,000,000).

5.3 The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the St. Louis Public Library. Before commencing the work, Contractor shall furnish the St. Louis Public Library with certificates of insurance from the insuring companies which certificates shall specify the effective dates of the policies, the limits of liability thereunder, and contain a provision that the said insurance will not be cancelled except upon thirty (30) days notice in writing to St. the Louis Public Library. Contractor shall not cancel any policies of insurance required hereunder prior to completion of the work without written consent of the St. Louis Public Library.

5.4 Contractor may use a combination of general liability insurance and excess liability insurance provided the sum of these insurances at least equals the amounts listed for the general liability insurance. if excess liability insurance is used, "umbrella form" must be furnished.

5.5 The carrying of insurance shall not be deemed to release Contractor or in any way diminish its liability, by way of indemnity or otherwise, as assumed by it under this agreement. The St. Louis Public Library shall furnish, at Contractor's request, satisfactory evidence of such insurance as the St. Louis Public Library may be required to obtain pursuant to the contract documents.

5.6 St. Louis Public Library and Contractor waive all rights against each other and against the architect/engineer, separate contractors, and all other subcontractors for damages caused by fire or other perils to the extent reimbursed by Builder's Risk or any other property insurance, except as such rights as they may have to the proceeds of such insurance.

## **6. Indemnity**

6.1 To the fullest extent permitted by law, Contractor agrees to indemnify and hold harmless, the St. Louis Public Library, the architect and all of their agents, officers and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees and court costs, arising out of or resulting from the performance, or failure in performance, of Contractor's work and obligations as provided in the contract documents, including any extra work, and from any claim, damage, loss or expense which (1) is attributable to bodily injury, sickness, disease, death, injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of Contractor or anyone directly or indirectly employed by it or anyone for whose acts it may be liable regardless of whether it is caused in part by a party indemnified hereunder.

6.2 In any and all claims against St. Louis Public Library, the architect or any of their agents or employees by any employee of Contractor, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under this paragraph 6 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under worker's compensation acts, disability benefits acts or other employee benefit acts.

6.3 The obligations of Contractor under this paragraph 6 shall not extend to the liability of the Architect, their agents or employees, arising out of (a) the preparation or approval of maps,

drawings, opinions, reports, surveys, change orders, designs or specifications, or (b) the giving or failure to give directions or instructions by the Architect, their agents or employees, providing such giving or failure to give is the primary cause of the injury or damage.

## **7. Bonds**

If required by the St. Louis Public Library, the Contractor shall furnish the St. Louis Public Library, in a form satisfactory to the St. Louis Public Library, full and duly executed performance and payment bonds, underwritten by a surety or sureties satisfactory to the St. Louis Public Library, in the full amount of this agreement. The Contractor's failure to deliver satisfactory bonds within ten (10) calendar days after demand may be deemed a material breach of this agreement.

## **8. Changes**

8.1 Contractor agrees that St. Louis Public Library may add to or deduct from the amount of work covered by this agreement. Any other made in the amount of work, or any other part of this agreement, shall be by written amendment hereto, setting forth in detail the changes involved. All modifications, including price adjustments, will be mutually agreed upon by both parties. Contractor agrees to proceed with the work as changed when so ordered in writing by the St. Louis Public Library so as not to delay the progress of the work, and pending any determination of the value thereof unless St. Louis Public Library first requests a proposal of cost before the change is effected. If the St. Louis Public Library requests a proposal of cost for a change, Contractor shall promptly comply with such requested price adjustment. Failure of the parties to agree to an adjustment may result in termination of this contract. Upon termination, the Contractor will be paid for all labor and material provided as of termination date. No consideration will be given for anticipated loss of revenue on the cancelled portion of the contract.

8.2 Contractor shall be paid for changes or alterations in the work the actual amount allowed therefore to the Contractor by the St. Louis Public Library. Contractor shall submit an itemized, detailed breakdown for each change proposal. The procedures for administering changes shall be set forth in the contract documents.

8.3 Contractor shall be entitled to receive no extra compensation for extra work or materials or changes of any kind regardless of whether the same was ordered by the St. Louis Public Library or any of his representatives unless a change order or written directive therefor has been issued in writing by the St. Louis Public Library. If extra work was ordered by the St. Louis Public Library and Contractor performed same but did not receive a written order therefor, Contractor shall be deemed to have waived any claim for extra compensation therefor. Contractor shall be responsible for any increased costs incurred by the architect, other contractors and subcontractors that result from Contractor proceeding with changes without a written order therefor.

8.4 Contractor shall not be entitled to receive an overhead and profit allowance in excess of ten percent (10%) of Contractor's actual cost for any extra work ordered in writing by the St. Louis Public Library, unless otherwise agreed in writing by the St. Louis Public Library and Contractor prior to the commencement of such extra work.

## **9. Inspection & Approvals**

9.1 Contractor shall provide at its own place of business, at the places of business of its subcontractors and suppliers, and at the project, sufficient safe and proper facilities for the inspection of Contractor's work by the St. Louis Public Library, or any other authorized representative. Contractor shall notify the St. Louis Public Library when portions of its work are ready for inspection.

9.2 Contractor shall, within twenty-four (24) hours after receiving written notice from Library, proceed to

take down and remove from the project all portions of its work, which the Library shall condemn as unsound or improper or in any way failing to meet the specifications and Contractor at its own expense shall make good all its work or any other work damaged by such removal and replace all removed portions of its work, or other work which cannot be repaired, with materials and workmanship meeting specifications.

9.3 In addition to any shop drawings and samples specified Contractor shall prepare at its own expense and furnish promptly, whenever requested by the St. Louis Public Library, a sufficient number of prints of shop drawings, manufacturer's data, templates, schedules, reports or any other data that may be necessary in the opinion of the St. Louis Public Library for review and approval by the St. Louis Public Library or its representative, and for distribution among other contractors or subcontractors. Contractor shall exercise the utmost diligence in obtaining all drawings, details and information necessary to perform its work, and if at any time drawings or information necessary to perform its work have not been furnished, Contractor shall promptly inform the St. Louis Public Library.

9.4 The approval by the St. Louis Public Library or his representative of any submittals by the Contractor shall not relieve Contractor of liability for any deviations from any contract requirement unless specifically called to the St. Louis Public Library's attention, in writing, and so acknowledged by the St. Louis Public Library in writing.

9.5 Any damage prior to final acceptance and payment for the project shall be immediately corrected and rectified by Contractor at its sole expense. Inspection or supervision by the St. Louis Public Library shall not relieve Contractor of its obligations herein. Contractor shall promptly perform any and all such list work submitted to it by the St. Louis Public Library.

## **10. Termination and Termination for Conveniences**

10.1 Should Contractor fail in the opinion of the St. Louis Public Library at any time to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality, or fail in any respect or prosecute the work with promptness and diligence, or fail to correct defective work promptly or fail in the performance of any of the requirements herein, the St. Louis Public Library may, at its option, provide such labor, materials and equipment and deduct the cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to Contractor. The St. Louis Public Library shall provide twenty-four (24) hour prior notice to Contractor except in any emergency.

10.2 If Contractor at any time shall refuse or neglect to supply sufficient properly skilled workmen, or materials or equipment of the proper quality and quantity, or fail in any respect or prosecute the work with promptness and diligence, or cause by any action or omission the stoppage or interference with the work of other contractors, or fail in the performance of any of the covenants herein contained, or be unable to meet his debts as they mature, Library may at its option at any time after serving written two- (2) calendar-day notice of such default, terminate Contractor's employment by delivering written notice of termination to Contractor. Thereafter, the St. Louis Public Library may take possession of the land and work of Contractor At the building site, and through itself or others provide labor, equipment and materials to prosecute Contractor's work on such terms and conditions as shall be deemed necessary, and shall deduct the cost thereof, including all charges, expenses, losses, costs, damages and attorneys' fees, incurred as a result of Contractor's failure to perform, from any money then due or thereafter to become due to Contractor.

10.3 If Library terminates the employment of Contractor, Contractor shall not be entitled to any further payments under this agreement until Contractor's work has been completed and accepted by the St. Louis Public Library. In the event that the unpaid balance due excess the St. Louis Public Library's cost of completion, the difference shall be paid to Contractor; but if such expense exceeds the balance due,

Contractor agrees promptly to pay the difference to the St. Louis Public Library.

10.4 Additionally, the St. Louis Public Library shall have the right to terminate this contract, by written notice, without Contractor being at fault, for any cause or for its own convenience, and require Contractor to immediately stop work. In such event, Library shall pay Contractor for that work actually performed in an amount proportionate to this contract sum. The St. Louis Public Library shall not be liable to Contractor for any costs nor for prospective profits on work not performed.

## **11. Claims**

11.1 Any claims or disputes which may arise, including adjustments to compensation or to time of completion, shall be governed by the contract documents. Claims, disputes or other matters in question between the parties to the agreement, arising out of this agreement or the breach thereof, may be submitted to arbitration or mediation only upon the subsequent, mutual and written agreement of the parties. Absent such agreement, all claims, disputes or other matters in question between the parties to this agreement, arising out of or relating to this agreement or the breach thereof, shall be decided by resort to litigation in any court of competent jurisdiction located within the City of Saint Louis, State of Missouri.

11.2 Contractor shall carry on the contract work and maintain satisfactory progress while any claim or dispute is being resolved.

## **12. Damage to Work**

All loss or damage to Contractor's work resulting from any cause whatsoever shall be borne and sustained by Contractor and shall be solely at its risk until final acceptance by the St. Louis Public Library. Contractor shall at all times and at its expense protect all labor, materials, supplies, tools and equipment against any damage, injury, destruction, theft or loss and in no event shall the St. Louis Public Library be liable or responsible therefor, and likewise for those of its mechanics, laborers, and materialmen, for all of which Contractor shall be solely responsible. Contractor shall at its expense promptly repair or replace damage to the work of others, or to any part of the project, resulting from its activities.

## **13. Compliance with Law and Safety**

13.1 All work, labor, services and materials to be furnished by Contractor must strictly comply with all applicable federal, state or local laws, rules, regulations, statutes, ordinances and directives (hereinafter "laws") now in force or hereafter in effect. All work, labor, services or materials necessary to comply with said Laws will be furnished by Contractor as part of this contract without any additional compensation. Contractor agrees to indemnify and save the St. Louis Public Library, and architect harmless from and against any and all claims, loss or expense caused directly or indirectly by its failure to fully comply herewith.

13.2 Contractor agrees that the prevention of accidents to workmen engaged in the work under the contract is solely its responsibility. Contractor shall comply with all applicable safety laws and with any safety standards established during the progress of the work by the St. Louis Public Library.

13.3 When so ordered by the Library, Contractor shall stop any part of the work which Library deems unsafe until corrective measures satisfactory to the St. Louis Public Library have been taken. Should Contractor neglect to adopt such corrective measures, the St. Louis Public Library may do so and deduct the cost from payments due to Contractor. Contractor shall timely submit copies of all accident or injury reports to the St. Louis Public Library.

13.4 **COVID-19** Contractor understands the novel coronavirus (“COVID-19”) is an extremely contagious disease, which can lead to serious illness. Contractor is familiar with the Centers for Disease Control and Prevention (“CDC”) guidelines regarding COVID-19 and understands those guidelines are subject to change. Contractor agrees to comply with such guidelines, any applicable state or local laws or regulations and advisories, as in effect from time to time, including but not limited to wearing masks and social distancing. Contractor affirms that no one on the job site has experienced any of the symptoms of COVID-19 within the last 14 days. If Contractor’s onsite workers exhibit any of the symptoms of COVID-19 at any time before, during or within 30 days of working in Library facilities, Contractor will immediately notify the Library. Contractor acknowledges and understands the inherent risks associated with COVID-19 and is voluntarily assuming such risks in the execution of work as designated in the contract. Contractor agrees to release and hold harmless the Library and its employees, officers, and agents from and against all claims and liability resulting from exposure to disease-causing organisms and objects, such as COVID-19 associated with executing any work as designated in the contract.

#### **14. Patents**

Contractor agrees to pay all royalties and license fees and to indemnify and hold harmless the St. Louis Public Library from any and all loss, damage or expense, including attorney’s fees and court costs, to which they may be put from claims or litigation for the misuse of any patented or unpatented invention or process, used or furnished by Contractor, unless required by the contract documents and not originated or prepared by Contractor.

#### **15. Guarantee**

15.1 Contractor warrants to the St. Louis Public Library that all materials and equipment furnished shall be new unless specified, and that all work under this contract shall be of good quality, free from faults and defects and in conformance with the contract documents.

15.2 Contractor agrees to promptly make good, without cost to the St. Louis Public Library, any and all defects due to faulty workmanship and/or materials which may appear within the guarantee, or warranty period established in the contract documents, and if no such period be stipulated in the contract documents, then such guarantee shall be for a period of one (1) year from date of completion and acceptance of the project by the St. Louis Public Library. Contractor further agrees to execute any special guarantees as provided by the contract documents or required by law. Contractor shall require similar guarantees from all vendors and subcontractors.

15.3 Contractor shall pay for all changes to the work resulting from such defects in workmanship or materials and all expenses necessary to replace or repair the work including that damaged or disturbed by making replacements or repairs. This guarantee is in addition to all other guarantees, warranties and rights contained in the contract documents, and otherwise provided by law.

#### **16. Labor Relations**

16.1 Contractor shall do whatever is necessary in the progress of its work to assure harmonious labor relations at the project and to prevent strikes or other labor disputes. Contractor shall employ only such labor as, to the St. Louis Public Library’s satisfaction, will work in harmony on the job and shall not use materials or employ means which may cause strikes or other labor troubles.

16.2 Contractor shall fully comply with all labor agreements and jurisdictional decisions presently in force or subsequently executed with or by the St. Louis Public Library. Contractor’s failure to so act may be deemed a material breach of this Contract.



16.3 Subcontractors shall comply with this article to the same extent as Contractor. Contractor shall include an express provision imposing such obligations on subcontractors on its subcontractors. Contractor shall indemnify the St. Louis Public Library against any liability, claim, loss, damage or expense resulting in any way, directly or indirectly, from its failure comply with the requirements of this Section 16, including fees and costs incurred in enforcing this indemnity.

**17. Temporary Facilities**

Contractor will furnish those temporary facilities and services required by Contractor except for those, if any, to be provided by the St. Louis Public Library as set forth in the contract documents. Storage areas, if available, will be allocated by the St. Louis Public Library for Contractor's materials and equipment during the course of the work. Locations of parking, office trailer (s), marshalling yards (s), etc. shall be submitted to and approved by the St. Louis Public Library.

**18. Occupancy of Project**

Whenever it may be useful or necessary for the St. Louis Public Library to do so, the St. Louis Public Library shall be permitted to occupy and use any portion of the work has been either partially or fully completed by Contractor before final inspection and acceptance thereof by the St. Louis Public Library but such use of occupation shall not relieve Contractor of its guarantee of said work and materials nor of its obligation to make good at its own expense any defect in materials and workmanship which may occur or develop prior to release from responsibility to the St. Louis Public Library.

**19. Equal Opportunity**

19.1 The St. Louis Public Library is an equal employment opportunity employer. Contractor agrees to comply with the Fair Labor Standards Act, Fair Employment Practices Act, Equal Opportunity Act, Missouri Prevailing Wage Law, Contract Work Hours and Safety Standards Act, Copeland Anti-Kick Back

Act and all other applicable federal, state and local laws pertaining to employment or labor relations including all equal employment opportunity laws and any small, disadvantaged and minority business enterprise requirements, in connection with the performance of its services pursuant to this agreement, and further agrees that this provision will be included in any contracts entered into by Contractor with any other person or entity for the performance of services in connection with this agreement. Contractor agrees to supply the St. Louis Public Library with any documentation requested by the St. Louis Public Library and to permit the St. Louis Public Library to review Contractor's records, reports and other documents as necessary to ascertain Contractor's compliance with the provisions of this subparagraph.

19.2 Contractor agrees to comply with applicable health and safety regulations, including those promulgated by EPA, OSHA and other federal, state and local agencies having jurisdiction over any project with respect to which Contractor is requested to provide services, in connection with the performance of its services pursuant to this agreement.

**20. Inspection of Documents**

Contractor acknowledges that all of the contract documents are on file in the St. Louis Public Library's office and have been made available to Contractor for inspection and copying. Contractor represents that it has carefully examined all of such contract documents or waives such examination. Contractor represents that it has satisfied itself and has become fully acquainted with the nature and location of the work contracted for hereunder, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, utilities, roads, weather conditions, river stages or similar physical conditions, the

conformation and condition of, the ground, the soil structure and subsurface conditions, obstructions, actual levels, excavating, filling in, the character and equipment of facilities needed preliminary to and during prosecution of the work, costs of materials and wage rates and all other matters which in any way might affect the work under this contract, or the cost thereof.

## **21. Contract and Interpretation**

21.1 Inconsistencies and Omissions. Should inconsistencies or omissions appear in the contract documents, it shall be the duty of the Contractor to so notify the St. Louis Public Library in writing within three (3) working days of the Contractor's discovery thereof. Upon receipt of said notice, the St. Louis Public Library shall instruct the Contractor as to the measures to be taken and the Contractor shall comply with the St. Louis Public Library's instructions.

21.2 To the extent that any inconsistencies or conflict in interpretation arise between the terms of this agreement and the contract documents, the terms of this agreement shall control and be binding on all parties hereto.

21.3 Law and Effect. This agreement shall be governed by the law of the State of Missouri.

21.4 Severability and Waiver. The partial or complete invalidity of any one or more provisions of this agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

21.5 Attorney's Fees. Should either party employ an attorney to institute suit to enforce any of the provisions hereof, to protect its interest in any matter arising under this agreement, or to collect damages for the breach of the agreement or to recover on a surety bond given by a party under this agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs, charges, and expenses expended or incurred therein.

21.6 Title. The titles given to the articles of this agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

## **22. Design Team Projects**

If the Contractor's work on the project is based on its design or a design in which it or architects and/or engineers or subcontractors engaged by Contractors prepared or participated in the preparation of, Contractor will indemnify and hold harmless the St. Louis Public Library and Architect and from any and all claims, demands, causes of action, suits, arbitration awards, actual, consequential and punitive damages, costs, expenses, fees (including attorney's fees) directly or indirectly relating to or arising out of any errors or omissions by Contractor or its architect or engineer or subcontractors who participated in such design, including, without limitation, all direct and indirect costs and expenses incurred in changing the design of the project, including, without limitation, costs and expenses incurred by the St. Louis Public Library, and Architect and costs and expenses incurred in modifying the design and work of the St. Louis Public Library, and the St. Louis Public Library's Architect rendered directly or indirectly incompatible as a result of such errors or omissions and in redesigning of Contractor's work affected or rendered incompatible as a consequence of such errors or omissions, all as determined by the St. Louis Public Library.

## **23. Miscellaneous**

23.1 Failure by the St. Louis Public Library in any instance to insist upon observance or performance by Contractor of any terms, conditions, of this agreement shall not be deemed a waiver by any such terms, conditions or provisions, and observance or performance thereof; no waiver shall be binding upon the St. Louis Public Library unless the same is in writing signed by the St. Louis Public Library and shall then be for the particular instance referred to in said writing only; waiver of any one breach shall not be deemed a waiver of any other breach; payment of any sum by the St. Louis Public Library to Contractor with knowledge of any breach shall not be deemed to be waiver of such breach or any other breach. The remainder of this agreement will not be voided by the invalidity of one or more of the terms of this agreement.

23.2 Contractor shall not place signs of any kind upon the project site without prior written approval of the St. Louis Public Library.

23.3 This Contractor, along with the contract documents incorporated herein, comprises the entire agreement between the parties. All prior negotiations and dealings between the parties are merged in, integrated and superseded by this contract which is binding upon and inures to the benefit of the parties and their successors, legal representatives and assigns. Notwithstanding the foregoing, Contractor shall not assign this contract, or sublet or subcontract all or any part of the work hereunder without the prior written consent of the St. Louis Public Library. All modifications of this contract must be in writing and signed by the parties hereto to be valid.

23.4 Contractor agrees to cooperate with the St. Louis Public Library in the purchase of materials, equipment or other items needed by Contractor for use in connection with the performance of services pursuant to this agreement, in order to take advantage of the St. Louis Public Library's exemption from sales tax under the pertinent law.

23.5 Neither party shall assign any rights under this agreement without the prior written consent of the other party.

23.6 Any notice or communication authorized or required hereunder shall be deemed to have been given, if hand-delivered or mailed by certified or registered mail, as follows:

**THE ST. LOUIS PUBLIC LIBRARY**

St. Louis Public Library, 1415 Olive Street, St. Louis, Missouri, 63103. Attention: William Jackson

**CONTRACTOR:**

The following exhibits are attached hereto and made part hereof:

In witness whereof, the parties hereto have executed this agreement as of the day and year first written above.

ATTEST:

\_\_\_\_\_

ST. LOUIS PUBLIC LIBRARY

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

Title: Chief Financial Officer

ATTEST:

\_\_\_\_\_

CONTRACTOR:

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

Title: \_\_\_\_\_

**Attachment A**

**BOARD OF DIRECTORS OF THE CITY OF ST LOUIS MUNICIPAL**  
**DISTRICT DBA ST. LOUIS PUBLIC LIBRARY**  
**RFB 21-003550 INTERIOR RENOVATION - JULIA DAVIS BRANCH**

**NON-COLLUSION AFFIDAVIT**

The undersigned being duly sworn on oath, says that the undersigned has not, nor has any other person, member, representative, or agent of the firm, company or corporation or partnership represented by the undersigned, entered into any combination, collusion or agreement with any person relative to the price to be proposed by anyone at such letting nor to prevent any person from proposing nor to induce anyone to refrain from proposing, and that this proposal is made without reference to any other proposal and without any agreement, understanding or combination with any other person in reference to such proposal.

Further, the undersigned says that no person or persons, firm, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such Proposal.

Proposer: \_\_\_\_\_

By (Written Signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## ATTACHMENT B

### **DIVERSITY STATEMENT OF THE BOARD OF DIRECTORS OF THE ST. LOUIS PUBLIC LIBRARY**

WHEREAS, the St. Louis Public Library (the "Library") is a municipal library district authorized pursuant to Chapter 182 of the Missouri Revised Statutes to, among other things, purchase, hold or lease grounds, and to occupy, lease or erect appropriate buildings for the use of the Library, and to exercise all powers and rights of political subdivisions or similar corporations; and

WHEREAS, the Board of Directors (the "Board") of the Library is vested with the power to make and adopt bylaws, rules and regulations for its own guidance and for the governance of the Library as may be expedient and not inconsistent with State law, and

WHEREAS, the Library provides free public library services for the City of St. Louis (the "City"), an urban area with vast ethnic, religious, socioeconomic and cultural backgrounds; and

WHEREAS, efforts to encourage by direct contact or general solicitation persons from diverse backgrounds to contract with or become employees of the Library; to educate through seminars and workshops persons from diverse backgrounds the opportunity to contract with or become employees of the Library; to assist persons from diverse backgrounds to contract with or become employees of the Library; to adjust or modify, when appropriate, financing, bonding, or insurance requirements for persons from diverse backgrounds to contract with or become employees of the Library; and to encourage partnering by persons from diverse backgrounds to contract with the Library will serve to further the governmental and public interest of the Library by providing outreach to the residents of the City; and

WHEREAS, a practice of the Library of contracting with and employing persons reflecting the ethnic, religious, socioeconomic and cultural backgrounds of the citizens of the City will serve to further the governmental interest of the Library; and

WHEREAS, a practice of the Library of contracting with and employing persons of varied ethnic religious, socioeconomic and cultural backgrounds will also further the governmental purposes of the Library by serving as a model to other public and private entities, by building the public trust, by creating role models, and by facilitating the interaction of persons of different backgrounds; and

WHEREAS, the Board of Directors of the St. Louis Public Library (the "Board") determined that it is feasible, necessary and in the public interest for the Board to adopt a diversity statement to provide guidance to the Library and adopted this Diversity Statement on March 31, 1997; and

WHEREAS, the Board wishes to amend this Diversity Statement to provide for annual review.

NOW THEREFORE, the Board of Directors of the St. Louis Public Library; does hereby resolve, determine and order as follows:

Section 1.        Findings. The Board of Directors of the St. Louis Public Library hereby finds and determines those matters set forth in the preambles hereof as fully and completely as if set out in full in this Section 1.

Section 2.        Diversity Statement. The Board of Directors of the Library hereby directs the officers and agents of the Library for the authorized Library purposes set forth in the preambles hereof and subject to the conditions hereinafter provided to develop and implement policies which encourage persons with diverse ethnic, religious, socioeconomic and cultural backgrounds in the City to contract with or become employed by the Library.

Section 3. Administration. The officers and agents of the Library are authorized and directed to (i) encourage by direct contact or general solicitation persons from diverse backgrounds to contract with or become employees of the Library; (ii) educate through seminars and workshops persons from diverse backgrounds of the opportunity to contract with or become employees of the Library; (iii) assist persons from diverse backgrounds to contract with or become employees of the Library; (iv) adjust or modify, when appropriate, financing, bonding or insurance requirements for persons from diverse backgrounds to contract with or become employees of the Library; (v) encourage partnering by persons from diverse backgrounds to contract with the Library; (vi) utilize alternative programs to facilitate participation; (vii) provide flexible provisions to account for special circumstances; (viii) maximize opportunities for persons to demonstrate any social, socioeconomic or other factors that would promote the Library's best interests; and (ix) adopt measures to minimize the impact of this policy on the rights of third parties.

Section 4. Actions of Officers Authorized. The officers of the Board, including the President, Vice President and Secretary of the Board and the Executive Director shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and to make ministerial alterations, changes or additions in any agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 5. Annual Review. The officers of the Board are authorized and directed to report upon the administration of the Diversity Statement at the Board's regular meeting in September of each year.

Section 6. Severability. If any section or other part of this Resolution whether large or small, shall for any reasons be held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Resolution.

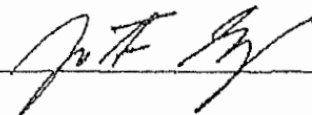
Section 7. Governing Law. This Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Section 8. Effective Date. This Resolution shall become effective immediately upon its passage.

ADOPTED by the Board of Directors of the St. Louis Public Library this 5th day of April, 2004.

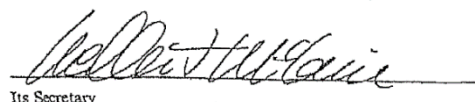
BOARD OF DIRECTORS OF THE  
ST. LOUIS PUBLIC LIBRARY

Its President



[SEAL]

ATTEST:



Its Secretary



**ATTACHMENT C**

**BOARD OF DIRECTORS OF THE CITY OF ST LOUIS MUNICIPAL**  
**DISTRICT DBA ST. LOUIS PUBLIC LIBRARY**  
**RFB 21-003550 INTERIOR RENOVATION - JULIA DAVIS BRANCH**

**E-VERIFY AFFIDAVIT**

Pursuant to Section 285.530 of the Missouri Revised Statutes, as amended, the Responder entering into a contract with the St. Louis Public Library is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Responder is not required to verify the work eligibility status of all its newly hired employees through the E-verify program if E-verify no longer exists.

The undersigned, on behalf of the Responder, being first duly sworn, deposes and states that the Responder does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the St. Louis Public Library, the undersigned Responder will enroll in and agree to verify the work eligibility status of all its newly hired employees through the E-Verify program.

Proposer: \_\_\_\_\_

By (Written Signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_