

01. GENERAL REQUIREMENTS:

1. *Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division-1 Specification sections, apply to work of this section.*

02. PURPOSE:

1. The intent of construction documents is to identify construction required for paving projects located at the new school bus garage and at a site on the east side of the Belcourt High School for Belcourt School District #7 located in Belcourt, North Dakota.
2. Single Prime Bid proposals shall be submitted and shall represent the paving work shown on the drawings and defined in the specifications.
3. TERO (Tribal Employment Rights Ordinance) shall be considered part of this project and is included with these documents.
4. All Contractors are required to utilize local labor at every opportunity. Contact the local Tero Office at Belcourt in developing their work plan and follow the ordinance requirements in the minority subcontractors described in the included TERO ordinance included in these specifications. For further information contact:
Tero Office
PO Box 900
Belcourt, ND 58316
Phone (701) 477-2662
5. The **Bid Opening** will be held at Belcourt School District #7 1207 William Hardesty St Belcourt, ND 58316, **Friday, April 10, 2026 at 1:00 P.M. Central Time.**

03. SCHEDULES:

1. The General Contractor upon award of contracts, shall propose a construction progress chart and submit to Architect and Owner for approval. Upon approvals, the General Contractor shall send one (1) copy each to all subcontractors, suppliers, engineers, and other prime contractors. Each successful Contractor shall sign off on the schedule indicating acceptance of proposed timeframes. The General Contractor is responsible for establishing a schedule, and for coordination on site of all trades. The same Contractor's foreman shall be used throughout this project for continuity.
2. Contractors may start construction as soon as possible. A substantial completion schedule date of August 1, 2026 shall be required. Liquidated Damages in the amount of \$500 per calendar day shall be assessed to the General Prime Contractor for each day past the completion date.
3. Contractors shall commence work in the shortest time possible upon a Notice to Proceed, and diligently continue work efforts to an early project completion.
4. Bi-weekly Zoom remote construction meetings will be held to assist and monitor project work flow. In the event that Contractors progress is slower than shown on the scheduled work program, the Architect will advise they are required to add additional capable staff or work overtime to bring said work into phase at no added cost to the Owner.

04. PROCEDURES:

1. Care shall be taken to protect, staff, public and workmen from all danger during construction. Contractors shall comply with O.S.H.A. and all governing safety precautions.
2. The General Contractor shall be responsible for building and maintaining adequate weatherproof and dust proof enclosures during the complete project term.
3. Contractors and subcontractors will be responsible for loss or damage through accident or careless workmanship. The Contractor is hereby made aware of the Owner's concern and their responsibility for accidents caused by smoking on the project site or the use of any open flame during construction procedures. The Contractor will be responsible for the meticulously careful removal and replacement of all components.
4. Care shall be taken to leave safe exit passage ways from construction area. Contractor shall take particular care when depositing materials on the building site and staging construction activities and maintaining safe traffic/equipment flow.

05. BID FORM AND DEDUCT ALTERNATES:

1. Contractors shall utilize the enclosed bid form when submitting work proposals.

END OF SECTION 00100

- Notice to Contractors
- Advertisement for Bids
- Bid Intent (Section 00100)
- Bid Forms
- Prior Approval Form
- A.I.A. Instruction to Bidders
- A.I.A. Bid Bond
- A.I.A. Performance/Labor & Material Bond
- A.I.A. Owner/Contractor Agreement A101
- A.I.A. List of Subcontractors
- A.I.A. Pay Request
- A.I.A. Change Order
- A.I.A. Consent of Surety Company to Final Payment
- A.I.A. Waiver of Liens
- A.I.A. Certificate of Substantial Completion
- A.I.A. General Conditions of the Contract for Construction #A201
- TERO Regulations

<u>DIVISION</u>	<u>01</u>	<u>GENERAL REQUIREMENTS:</u>
	01010	SUMMARY OF WORK
	01200	INTERPRETATION OF DOCUMENTS
	01300	SUBMITTALS
	01400	TESTING
	01500	CONTRACTORS RESPONSIBILITY
	01600	BID PROCEDURES
	01620	CONSTRUCTION PAYMENT PROCEDURES
	01650	CLEANING
	01720	STAKING & CONSTRUCTION SURVEYING

<u>DIVISION</u>	<u>02</u>	<u>GEOTECHNICAL:</u>
	02300	EARTHWORK
	02330	ACCESS ROAD AND GRAVEL SURFACING
	02370	EROSION AND SEDIMENT CONTROL
	02513	ASPHALT PAVING
	02920	TOPSOILING, SEEDING, FERTILIZER & MULCHING

END OF SECTION

REQUEST FOR APPROVAL OF SUBSTITUTION

PROJECT _____

DATE _____
NO. _____

BID DATE _____

We hereby submit for your consideration the following product instead of the specified item for the above Project.

SECTION _____ LINE NO. _____ SPECIFIED NO. _____

PROPOSED SUBSTITUTION _____

_____ COMPLETE TECHNICAL DATA, INCLUDING LABORATORY TESTS, IF APPLICABLE, IS ATTACHED.

(Include complete information on changes to Drawings and/or Specifications, which proposed substitutions will require for its proper installation.)

Does the substitution affect dimensions shown on drawings? Yes _____ No _____
Describe _____

Will the undersigned pay for changes to the building design, including engineering and detailing costs caused by the requested substitution? Yes _____ No _____

Does the Substitution affect other Trades Yes _____ No _____

Describe differences between proposed substitution and specified items. _____

Manufacture's Guarantees of the proposed and specified items are different: (Explain on attachment.) Yes _____ No _____

Submitted By: (Print name) _____

Firm Name & Address _____

DATE _____

Telephone # _____

Response of Specifiers:

_____ Request is approved Subject Compliance with the specification and An addendum will be issued.

_____ Approval cannot be granted Because the request did not reach this Office within the specified time.

_____ Approval cannot be granted at his time.

_____ Prior Approval is NOT Required.

BY _____

(Signature)

AIA® Document A701® – 2018

Instructions to Bidders

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

Bus Garage and High School Paving
Belcourt, ND 58316

The project consists of asphalt paving work at two different sites for the Belcourt School District #7. The first site is the new school bus garage site and the other is a site east of the Belcourt High School. Major items include 12" Subgrade Preparation 3,800 SF (Bus Garage) & 1,800 SF (High School), 6" Class V Gravel 1,270 TON (Bus Garage) & 575 TONS (High School), 5" Asphalt Pavement FAA 43 (Base Bid) 1,060 TONS (Bus Garage) & 500 TONS (High School), 6" Concrete Alt #1 15,200 SF (High School), Seeding and Mulching 1 LSUM and related items.

THE OWNER:
(Name, legal status, address, and other information)

Belcourt School District #7
PO Box 440
Belcourt, ND 58316

THE ARCHITECT:
(Name, legal status, address, and other information)

Jiran Architects & Planners, PC
1431 Interstate Loop
Bismarck, ND 58503
701-258-7771

TABLE OF ARTICLES

- 1 DEFINITIONS
- 2 BIDDER'S REPRESENTATIONS
- 3 BIDDING DOCUMENTS
- 4 BIDDING PROCEDURES
- 5 CONSIDERATION OF BIDS
- 6 POST-BID INFORMATION
- 7 PERFORMANCE BOND AND PAYMENT BOND
- 8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

ADDITIONS AND DELETIONS:

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

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

FEDERAL, STATE, AND LOCAL LAWS MAY IMPOSE REQUIREMENTS ON PUBLIC PROCUREMENT CONTRACTS. CONSULT LOCAL AUTHORITIES OR AN ATTORNEY TO VERIFY REQUIREMENTS APPLICABLE TO THIS PROCUREMENT BEFORE COMPLETING THIS FORM.

It is intended that AIA Document G612™-2017, Owner's Instructions to the Architect, Parts A and B will be completed prior to using this document.

ARTICLE 1 DEFINITIONS

§ 1.1 Bidding Documents include the Bidding Requirements and the Proposed Contract Documents. The Bidding Requirements consist of the advertisement or invitation to bid, Instructions to Bidders, supplementary instructions to bidders, the bid form, and any other bidding forms. The Proposed Contract Documents consist of the unexecuted form of Agreement between the Owner and Contractor and that Agreement's Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda, and all other documents enumerated in Article 8 of these Instructions.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, or in other Proposed Contract Documents apply to the Bidding Documents.

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

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

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

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from, or that does not change, the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

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

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

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

ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 By submitting a Bid, the Bidder represents that:

- .1 the Bidder has read and understands the Bidding Documents;
- .2 the Bidder understands how the Bidding Documents relate to other portions of the Project, if any, being bid concurrently or presently under construction;
- .3 the Bid complies with the Bidding Documents;
- .4 the Bidder has visited the site, become familiar with local conditions under which the Work is to be performed, and has correlated the Bidder's observations with the requirements of the Proposed Contract Documents;
- .5 the Bid is based upon the materials, equipment, and systems required by the Bidding Documents without exception; and
- .6 the Bidder has read and understands the provisions for liquidated damages, if any, set forth in the form of Agreement between the Owner and Contractor.

ARTICLE 3 BIDDING DOCUMENTS

§ 3.1 Distribution

§ 3.1.1 Bidders shall obtain complete Bidding Documents, as indicated below, from the issuing office designated in the advertisement or invitation to bid, for the deposit sum, if any, stated therein.

(Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall obtain Bidding Documents.)

§ 3.1.2 Any required deposit shall be refunded to Bidders who submit a bona fide Bid and return the paper Bidding Documents in good condition within ten days after receipt of Bids. The cost to replace missing or damaged paper documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the paper Bidding Documents, and the Bidder's deposit will be refunded.

§ 3.1.3 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the advertisement or invitation to bid, or in supplementary instructions to bidders.

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

§ 3.1.5 The Bidding Documents will be available for the sole purpose of obtaining Bids on the Work. No license or grant of use is conferred by distribution of the Bidding Documents.

§ 3.2 Modification or Interpretation of Bidding Documents

§ 3.2.1 The Bidder shall carefully study the Bidding Documents, shall examine the site and local conditions, and shall notify the Architect of errors, inconsistencies, or ambiguities discovered and request clarification or interpretation pursuant to Section 3.2.2.

§ 3.2.2 Requests for clarification or interpretation of the Bidding Documents shall be submitted by the Bidder in writing and shall be received by the Architect at least seven days prior to the date for receipt of Bids.
(Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall submit requests for clarification and interpretation.)

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

§ 3.3 Substitutions

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

§ 3.3.2 Substitution Process

§ 3.3.2.1 Written requests for substitutions shall be received by the Architect at least ten days prior to the date for receipt of Bids. Requests shall be submitted in the same manner as that established for submitting clarifications and interpretations in Section 3.2.2.

§ 3.3.2.2 Bidders shall submit substitution requests on a Substitution Request Form if one is provided in the Bidding Documents.

§ 3.3.2.3 If a Substitution Request Form is not provided, requests shall include (1) the name of the material or equipment specified in the Bidding Documents; (2) the reason for the requested substitution; (3) a complete description of the proposed substitution including the name of the material or equipment proposed as the substitute, performance and test data, and relevant drawings; and (4) any other information necessary for an evaluation. The request shall include a statement setting forth changes in other materials, equipment, or other portions of the Work, including changes in the work of other contracts or the impact on any Project Certifications (such as LEED), that will result from incorporation of the proposed substitution.

§ 3.3.3 The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

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

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

§ 3.4 Addenda

§ 3.4.1 Addenda will be transmitted to Bidders known by the issuing office to have received complete Bidding Documents.

(Indicate how, such as by email, website, host site/platform, paper copy, or other method Addenda will be transmitted.)

§ 3.4.2 Addenda will be available where Bidding Documents are on file.

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

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

ARTICLE 4 BIDDING PROCEDURES

§ 4.1 Preparation of Bids

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

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

§ 4.1.3 Sums shall be expressed in both words and numbers, unless noted otherwise on the bid form. In case of discrepancy, the amount entered in words shall govern.

§ 4.1.4 Edits to entries made on paper bid forms must be initialed by the signer of the Bid.

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

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall neither make additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name and legal status of the Bidder. As part of the documentation submitted with the Bid, the Bidder shall provide evidence of its legal authority to perform the Work in the jurisdiction where the Project is located. Each copy of the Bid shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further name the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached, certifying the agent's authority to bind the Bidder.

§ 4.1.8 A Bidder shall incur all costs associated with the preparation of its Bid.

§ 4.2 Bid Security

§ 4.2.1 Each Bid shall be accompanied by the following bid security:
(Insert the form and amount of bid security.)

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

§ 4.2.3 If a surety bond is required as bid security, it shall be written on AIA Document A310™, Bid Bond, unless otherwise provided in the Bidding Documents. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of an acceptable power of attorney. The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 4.2.4 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until (a) the Contract has been executed and bonds, if required, have been furnished; (b) the specified time has elapsed so that Bids may be withdrawn; or (c) all Bids have been rejected. However, if no Contract has been awarded or a Bidder has not been notified of the acceptance of its Bid, a Bidder may, beginning days after the opening of Bids, withdraw its Bid and request the return of its bid security.

§ 4.3 Submission of Bids

§ 4.3.1 A Bidder shall submit its Bid as indicated below:

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(Indicate how, such as by website, host site/platform, paper copy, or other method Bidders shall submit their Bid.)

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

§ 4.3.3 Bids shall be submitted by the date and time and at the place indicated in the invitation to bid. Bids submitted after the date and time for receipt of Bids, or at an incorrect place, will not be accepted.

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

§ 4.3.5 A Bid submitted by any method other than as provided in this Section 4.3 will not be accepted.

§ 4.4 Modification or Withdrawal of Bid

§ 4.4.1 Prior to the date and time designated for receipt of Bids, a Bidder may submit a new Bid to replace a Bid previously submitted, or withdraw its Bid entirely, by notice to the party designated to receive the Bids. Such notice shall be received and duly recorded by the receiving party on or before the date and time set for receipt of Bids. The receiving party shall verify that replaced or withdrawn Bids are removed from the other submitted Bids and not considered. Notice of submission of a replacement Bid or withdrawal of a Bid shall be worded so as not to reveal the amount of the original Bid.

§ 4.4.2 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids in the same format as that established in Section 4.3, provided they fully conform with these Instructions to Bidders. Bid security shall be in an amount sufficient for the Bid as resubmitted.

§ 4.4.3 After the date and time designated for receipt of Bids, a Bidder who discovers that it made a clerical error in its Bid shall notify the Architect of such error within two days, or pursuant to a timeframe specified by the law of the jurisdiction where the Project is located, requesting withdrawal of its Bid. Upon providing evidence of such error to the reasonable satisfaction of the Architect, the Bid shall be withdrawn and not resubmitted. If a Bid is withdrawn pursuant to this Section 4.4.3, the bid security will be attended to as follows:

(State the terms and conditions, such as Bid rank, for returning or retaining the bid security.)

ARTICLE 5 CONSIDERATION OF BIDS

§ 5.1 Opening of Bids

If stipulated in an advertisement or invitation to bid, or when otherwise required by law, Bids properly identified and received within the specified time limits will be publicly opened and read aloud. A summary of the Bids may be made available to Bidders.

§ 5.2 Rejection of Bids

Unless otherwise prohibited by law, the Owner shall have the right to reject any or all Bids.

§ 5.3 Acceptance of Bid (Award)

§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest responsive and responsible Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents. Unless otherwise prohibited by law, the Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's best interests.

§ 5.3.2 Unless otherwise prohibited by law, the Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the lowest responsive and responsible Bidder on the basis of the sum of the Base Bid and Alternates accepted.

ARTICLE 6 POST-BID INFORMATION

§ 6.1 Contractor's Qualification Statement

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request and within the timeframe specified by the Architect, a properly executed AIA Document A305™, Contractor's Qualification Statement,

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unless such a Statement has been previously required and submitted for this Bid.

§ 6.2 Owner's Financial Capability

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

§ 6.3 Submittals

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

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

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

§ 6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, withdraw the Bid or submit an acceptable substitute person or entity. The Bidder may also submit any required adjustment in the Base Bid or Alternate Bid to account for the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

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

ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

§ 7.1 Bond Requirements

§ 7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder.

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

§ 7.1.3 The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 7.1.4 Unless otherwise indicated below, the Penal Sum of the Payment and Performance Bonds shall be the amount of the Contract Sum.

(If Payment or Performance Bonds are to be in an amount other than 100% of the Contract Sum, indicate the dollar amount or percentage of the Contract Sum.)

§ 7.2 Time of Delivery and Form of Bonds

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

§ 7.2.2 Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond.

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

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

ARTICLE 8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

§ 8.1 Copies of the proposed Contract Documents have been made available to the Bidder and consist of the following documents:

.1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, unless otherwise stated below.
(Insert the complete AIA Document number, including year, and Document title.)

.2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds, unless otherwise stated below.
(Insert the complete AIA Document number, including year, and Document title.)

.3 AIA Document A201™-2017, General Conditions of the Contract for Construction, unless otherwise stated below.
(Insert the complete AIA Document number, including year, and Document title.)

.4 Building Information Modeling Exhibit, if completed:

.5 Drawings

Number	Title	Date
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.6 Specifications

Section	Title	Date	Pages
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.7 Addenda:

Number	Date	Pages
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.8 Other Exhibits:

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

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

The Sustainability Plan:

Title	Date	Pages
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Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .9 Other documents listed below:
(List here any additional documents that are intended to form part of the Proposed Contract Documents.)



AIA[®]

Document A310™ – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

OWNER:

(Name, legal status and address)

Belcourt School District #7
PO Box 440
Belcourt, ND 58316

BOND AMOUNT: \$

PROJECT:

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

Bus Garage and High School Paving
Belcourt, ND 58316

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

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

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

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

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

Signed and sealed this Nineteenth day of March , Two Thousand Twenty-Six

CONTRACTOR AS PRINCIPAL *(Signature)*

SURETY *(Signature)*

(Printed name and title)

(Printed name and title)

(Witness)

(Witness)



AIA® Document A312® – 2010

Payment Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

OWNER:
(Name, legal status and address)
Belcourt School District #7
PO Box 440
Belcourt, ND 58316

CONSTRUCTION CONTRACT
Date: 03-19-2026
Amount: \$ 0.00
Description:
(Name and location)
Bus Garage and High School Paving
Belcourt, ND 58316

BOND
Date:
(Not earlier than Construction Contract Date)

Amount: \$
Modifications to this Bond:

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

Company: *(Corporate seal)*

Company: *(Corporate seal)*

CONTRACTOR AS PRINCIPAL
(Signature)

SURETY *(Signature)*

(Printed name and title)

(Printed name and title)

(Any additional signatures appear on the last page of this Payment Bond)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Duane Poitra
PO Box 440
Belcourt, ND 58316
701-550-1588
Duane.Poitra@k12.nd.us

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- 1** have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- 2** have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under

this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

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

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

Performance Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

OWNER:
(Name, legal status and address)
Belcourt School District #7
PO Box 440
Belcourt, ND 58316

CONSTRUCTION CONTRACT
Date: 03-19-2026
Amount: \$ 0.00
Description:
(Name and location)
Bus Garage and High School Paving
Belcourt, ND 58316

BOND
Date:
(Not earlier than Construction Contract Date)

Amount: \$
Modifications to this Bond:

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

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

Company: *(Corporate seal)* Company: *(Corporate seal)*

CONTRACTOR AS PRINCIPAL
(Signature)

SURETY *(Signature)*

(Printed name and title)

(Printed name and title)

(Any additional signatures appear on the last page of this Performance Bond)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)
Duane Poitra
PO Box 440
Belcourt, ND 58316
701-550-1588
Duane.Poitra@k12.nd.us

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1** the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2** the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3** the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1** After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2** Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1** the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2** additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and

- 3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

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

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

AIA® Document A101® – 2017

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

AGREEMENT made as of the _____ h day of _____ in the year Two Thousand Twenty-Six
(In words, indicate day, month and year.)

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

Belcourt School District #7
PO Box 440
Belcourt, ND 58316

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

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

Bus Garage and High School Paving
Belcourt, ND 58316

The project consists of asphalt paving work at two different sites for the Belcourt School District #7. The first site is the new school bus garage site and the other is a site east of the Belcourt High School. Major items include 12" Subgrade Preparation 3,800 SF (Bus Garage) & 1,800 SF (High School), 6" Class V Gravel 1,270 TON (Bus Garage) & 575 TONS (High School), 5" Asphalt Pavement FAA 43 (Base Bid) 1,060 TONS (Bus Garage) & 500 TONS (High School), 6" Concrete Alt #1 15,200 SF (High School), Seeding and Mulching 1 LSUM and related items.

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

Jiran Architects & Planners, PC
1431 Interstate Loop
Bismarck, ND 58503
701-258-7771

The Owner and Contractor agree as follows.

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

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

TABLE OF ARTICLES

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

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

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

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

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

§ 3.3 Substantial Completion

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

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

- Not later than () calendar days from the date of commencement of the Work.
- By the following date:

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User Notes:

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

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

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

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Zero Dollars and Zero Cents (\$ 0.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

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

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

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

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

(Identify each allowance.)

Item	Price
------	-------

§ 4.4 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:

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

§ 4.6 Other:

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

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than () days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

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

§ 5.1.7 Retainage

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

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

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

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

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

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this

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Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

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

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

§ 5.2 Final Payment

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

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

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

§ 5.3 Interest

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

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

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

§ 6.2 Binding Dispute Resolution

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

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other (Specify)

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

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(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

Duane Poitra
PO Box 440
Belcourt, ND 58316
701-550-1588
Duane.Poitra@k12.nd.us

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

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

§ 8.5 Insurance and Bonds

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

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

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

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

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

- .5 Drawings

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

.6 Specifications

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

.7 Addenda, if any:

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

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

.8 Other Exhibits:

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

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

The Sustainability Plan:

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

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.9 Other documents, if any, listed below:

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

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

OWNER (Signature)

BY: Duane Poitra, Business Manager

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

 **AIA**[®] Document G705[™] – 2001

List of Subcontractors

PROJECT:*(Name and address)*
Bus Garage and High School Paving
Belcourt, ND 58316

DATE:

TO ARCHITECT:*(Name and address)*
Jiran Architects & Planners, PC
1431 Interstate Loop
Bismarck, ND 58503

ARCHITECT'S PROJECT NUMBER:
2601

FROM CONTRACTOR:*(Name and address)*

CONTRACTOR'S PROJECT NUMBER:

(List Subcontractors and others proposed to be employed on the above Project as required by the bidding documents.)

Work/Firm Name	Address/Phone	Superintendent



AIA Document G702 - 1992

Application and Certificate for Payment

TO OWNER: Belcourt School District #7
 PO Box 440
 Belcourt, ND 58316

PROJECT: Bus Garage and High School Paving
 Belcourt, ND 58316

APPLICATION NO: 001

PERIOD TO: March 19, 2026

CONTRACTOR: Jiran Architects & Planners, PC
 1431 Interstate Loop
 Bismarck, ND 58503

ARCHITECT: []

CONTRACTOR: []

CONTRACTOR FOR: []

CONTRACT DATE: []

FIELD: []

OTHER: []

Distribution to:
 OWNER: []
 ARCHITECT: []
 CONTRACTOR: []
 FIELD: []
 OTHER: []

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract AIA Document G703, Continuation Sheet, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

1. ORIGINAL CONTRACT SUM..... \$0.00
2. NET CHANGE BY CHANGE ORDERS..... \$0.00 CONTRACTOR:
3. CONTRACT SUM TO DATE (Line 1 ± 2)..... \$0.00 By: _____ Date: _____
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)..... \$0.00 State of: _____ County of: _____
5. RETAINAGE:
 - a. 0.00% of Completed Work
 (Column D + E on G703) = \$0.00
 - b. 0.00% of Stored Material
 (Column F on G703) = \$0.00

Total Retainage (Lines 5a + 5b or Total in Column I of G703)..... \$0.00

Subscribed and sworn to before me this _____ day of _____

Notary Public: _____ My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED..... \$0.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: _____ Date: _____

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order		\$0.00

9. BALANCE TO FINISH, INCLUDING RETAINAGE

(Line 3 less Line 6)

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



AIA® Document G701® – 2017

Change Order

PROJECT: *(Name and address)*
 Bus Garage and High School Paving
 Belcourt, ND 58316

CONTRACT INFORMATION:
 Contract For:
 Date: 03-19-2026

CHANGE ORDER INFORMATION:
 Change Order Number: 001
 Date:

OWNER: *(Name and address)*
 Belcourt School District #7
 PO Box 440
 Belcourt, ND 58316

ARCHITECT: *(Name and address)*
 Jiran Architects & Planners, PC
 1431 Interstate Loop
 Bismarck, ND 58503

CONTRACTOR: *(Name and address)*

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

The original Contract Sum was	\$	0.00
The net change by previously authorized Change Orders	\$	0.00
The Contract Sum prior to this Change Order was	\$	0.00
The Contract Sum will be unchanged by this Change Order in the amount of	\$	0.00
The new Contract Sum including this Change Order will be	\$	0.00

The Contract Time will be unchanged by () days.
 The new date of Substantial Completion will be

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

ARCHITECT *(Signature)*
 BY: Jeff Welch, AIA, Project Architect

(Printed name, title, and license number if required)

 Date

CONTRACTOR *(Signature)*

(Printed name and title)

 Date

OWNER *(Signature)*
 BY: Duane Poitra, Business Manager

(Printed name and title)

 Date

 **AIA**® Document G707™ – 1994

Consent of Surety to Final Payment

PROJECT: <i>(Name and address)</i> Bus Garage and High School Paving Belcourt, ND 58316	ARCHITECT'S PROJECT NUMBER: 2601 CONTRACT FOR: CONTRACT DATED: 03-19-2026	OWNER: [] ARCHITECT: [] CONTRACTOR: [] SURETY: [] OTHER: []
--	--	---

TO OWNER: *(Name and address)*
Belcourt School District #7
PO Box 440
Belcourt, ND 58316

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the
(Insert name and address of Surety)

_____ , SURETY,
on bond of
(Insert name and address of Contractor)

_____ , CONTRACTOR,
hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall
not relieve the Surety of any of its obligations to
(Insert name and address of Owner)

Belcourt School District #7
PO Box 440
Belcourt, ND 58316

as set forth in said Surety's bond. _____ , OWNER,

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date:
(Insert in writing the month followed by the numeric date and year.)

Attest:
(Seal):

SURETY *(Signature)*

(Printed name and title)



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Document G706[®]A – 1994

Contractor's Affidavit of Release of Liens

PROJECT: *(Name and address)*
Bus Garage and High School Paving
Belcourt, ND 58316

ARCHITECT'S PROJECT NUMBER :
2601
CONTRACT FOR:

OWNER: []
ARCHITECT: []
CONTRACTOR: []
SURETY: []
OTHER: []

TO OWNER: *(Name and address)*
Belcourt School District #7
PO Box 440
Belcourt, ND 58316

CONTRACT DATED:
03-19-2026

STATE OF:
COUNTY OF:

The undersigned hereby certifies that to the best of the undersigned's knowledge, information and belief, except as listed below, the Releases or Waivers of Lien attached hereto include the Contractor, all Subcontractors, all suppliers of materials and equipment, and all performers of Work, labor or services who have or may have liens or encumbrances or the right to assert liens or encumbrances against any property of the Owner arising in any manner out of the performance of the Contract referenced above.

EXCEPTIONS:

SUPPORTING DOCUMENTS ATTACHED HERETO:

1. Contractor's Release or Waiver of Liens, conditional upon receipt of final payment.
2. Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.

CONTRACTOR: *(Name and address)*

CONTRACTOR'S Authorized Representative *(Signature)*

(Printed name and title)

Date

Subscribed and sworn to before me on this date:

Notary Public:
My Commission Expires:



AIA[®]

Document G704[®] – 2017

Certificate of Substantial Completion

PROJECT: *(name and address)*
Bus Garage and High School Paving
Belcourt, ND 58316

CONTRACT INFORMATION:
Contract For:
Date: 03-19-2026

CERTIFICATE INFORMATION:
Certificate Number:
Date:

OWNER: *(name and address)*
Belcourt School District #7
PO Box 440
Belcourt, ND 58316

ARCHITECT: *(name and address)*
Jiran Architects & Planners, PC
1431 Interstate Loop
Bismarck, ND 58503

CONTRACTOR: *(name and address)*

The Work identified below has been reviewed and found, to the Architect's best knowledge, information, and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate. *(Identify the Work, or portion thereof, that is substantially complete.)*

ARCHITECT *(Signature)* BY: Jeff Welch, AIA , Project Architect _____
(Printed name, title, and license number if required) *Date Of Substantial Completion*

WARRANTIES
The date of Substantial Completion of the Project or portion designated above is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:
(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)

WORK TO BE COMPLETED OR CORRECTED
A list of items to be completed or corrected is attached hereto, or transmitted as agreed upon by the parties, and identified as follows:
(Identify the list of Work to be completed or corrected.)

The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment, whichever occurs first. The Contractor will complete or correct the Work on the list of items attached hereto within () days from the above date of Substantial Completion.

Cost estimate of Work to be completed or corrected: \$ _____

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall be as follows:
(Note: Owner's and Contractor's legal and insurance counsel should review insurance requirements and coverage.)

The Owner and Contractor hereby accept the responsibilities assigned to them in this Certificate of Substantial Completion:

CONTRACTOR *(Signature)* _____ _____
(Printed name and title) *Date*

OWNER *(Signature)* BY: Duane Poitra, Business Manager _____
(Printed name and title) *Date*



AIA® Document A201® – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
Bus Garage and High School Paving
Belcourt, ND 58316

THE OWNER:
(Name, legal status and address)
Belcourt School District #7
PO Box 440
Belcourt, ND 58316

THE ARCHITECT:
(Name, legal status and address)
Jiran Architects & Planners, PC
1431 Interstate Loop
Bismarck, ND 58503

TABLE OF ARTICLES

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

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

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

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

INDEX

(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

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

Addenda

1.1.1, 3.11

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3

Approvals

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

Arbitration

8.3.1, 11.3.10, 13.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

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

Architect, Limitations of Authority and

Responsibility

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

Architect's Additional Services and Expenses

2.4, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

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

Architect's Inspections

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

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

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

Architect's Relationship with Subcontractors

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

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

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

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

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

Boiler and Machinery Insurance

11.3.2

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3
 Certificates of Inspection, Testing or Approval
 13.5.4
 Certificates of Insurance
 9.10.2, 11.1.3
Change Orders
 1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3
Change Orders, Definition of
7.2.1
CHANGES IN THE WORK
 2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.3.9
Claims, Definition of
15.1.1
CLAIMS AND DISPUTES
 3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4
Claims and Timely Assertion of Claims
 15.4.1
Claims for Additional Cost
 3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4
Claims for Additional Time
 3.2.4, 3.7.4, 6.1.1, 8.3.2, 10.3.2, 15.1.5
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
 3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Claims Subject to Arbitration
 15.3.1, 15.4.1
Cleaning Up
3.15, 6.3
Commencement of the Work, Conditions Relating to
 2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4
Commencement of the Work, Definition of
8.1.2
Communications Facilitating Contract Administration
 3.9.1, 4.2.4
Completion, Conditions Relating to
 3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2
COMPLETION, PAYMENTS AND
9
Completion, Substantial
 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7
Compliance with Laws
 1.6, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3
Concealed or Unknown Conditions
 3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
 1.1.1, 6.1.1, 6.1.4

Consent, Written
 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2
Consolidation or Joinder
15.4.4
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
 1.1.4, 6
Construction Change Directive, Definition of
7.3.1
Construction Change Directives
 1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1
Construction Schedules, Contractor's
 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contingent Assignment of Subcontracts
 5.4, 14.2.2.2
Continuing Contract Performance
15.1.3
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR SUSPENSION OF THE
 5.4.1.1, 11.3.9, 14
Contract Administration
 3.1.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating to
 3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1
Contract Documents, Copies Furnished and Use of
 1.5.2, 2.2.5, 5.3
Contract Documents, Definition of
1.1.1
Contract Sum
 3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5
Contract Sum, Definition of
9.1
Contract Time
 3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5
Contract Time, Definition of
8.1.1
CONTRACTOR
3
Contractor, Definition of
3.1, 6.1.2
Contractor's Construction Schedules
 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contractor's Employees
 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
 3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4
Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

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

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

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

Contractor's Review of Contract Documents
3.2

Contractor's Right to Stop the Work
9.7

Contractor's Right to Terminate the Contract
14.1, 15.1.6

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

Contractor's Superintendent
3.9, 10.2.6

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

Contractual Liability Insurance
11.1.1.8, 11.2

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

Copies Furnished of Drawings and Specifications
1.5, 2.2.5, 3.11

Copyrights
1.5, 3.17

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

Correlation and Intent of the Contract Documents
1.2

Cost, Definition of
7.3.7

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

Cutting and Patching
3.14, 6.2.5

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

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

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

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

Date of Commencement of the Work, Definition of
8.1.2

Date of Substantial Completion, Definition of
8.1.3

Day, Definition of
8.1.4

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

Decisions to Withhold Certification
9.4.1, 9.5, 9.7, 14.1.1.3

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

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

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

Disputes
6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site
3.11

Drawings, Definition of
1.1.5

Drawings and Specifications, Use and Ownership of
3.11

Effective Date of Insurance
8.2.2, 11.1.2

Emergencies
10.4, 14.1.1.2, 15.1.4

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

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

Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.5, 15.2.5

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

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

Fire and Extended Coverage Insurance
11.3.1.1

GENERAL PROVISIONS
1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials

10.2.4, 10.3

Identification of Subcontractors and Suppliers

5.2.1

Indemnification

3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

Information and Services Required of the Owner

2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

Instruments of Service, Definition of

1.1.7

Insurance

3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

Insurance, Boiler and Machinery

11.3.2

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 11.1.2

Insurance, Loss of Use

11.3.3

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, 11.3

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

Interest

13.6

Interpretation

1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12, 15.1.4

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

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

Labor Disputes

8.3.1

Laws and Regulations

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Liens

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 13.7, 15.4.1.1

Limitations of Liability

2.3, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7,

4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3,

11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2

Limitations of Time

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,

5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,

11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

Loss of Use Insurance

11.3.3

Material Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

Materials, Hazardous

10.2.4, 10.3

Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13,

3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,

9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and

Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 15.2.8

Mediation

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

Minor Changes in the Work

1.1.1, 3.12.8, 4.2.8, 7.1, 7.4

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.3.1

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of

2.3, 2.4, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

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

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

Notice of Claims
3.7.4, 10.2.8, 15.1.2, 15.4

Notice of Testing and Inspections
13.5.1, 13.5.2

Observations, Contractor's
3.2, 3.7.4

Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5

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

OWNER
2

Owner, Definition of
2.1.1

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

Owner's Authority
1.5, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.4

Owner's Liability Insurance
11.2

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

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

Owner's Right to Clean Up
6.3

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

Owner's Right to Stop the Work
2.3

Owner's Right to Suspend the Work
14.3

Owner's Right to Terminate the Contract
14.2

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

Partial Occupancy or Use
9.6.6, 9.9, 11.3.1.5

Patching, Cutting and
3.14, 6.2.5

Patents
3.17

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

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

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

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

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

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

PAYMENTS AND COMPLETION
9

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

PCB
10.3.1

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

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

PERSONS AND PROPERTY, PROTECTION OF
10

Polychlorinated Biphenyl
10.3.1

Product Data, Definition of
3.12.2

Product Data and Samples, Shop Drawings
3.11, 3.12, 4.2.7

Progress and Completion
4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

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

Project, Definition of
1.1.4

Project Representatives
4.2.10

Property Insurance
10.2.5, 11.3

PROTECTION OF PERSONS AND PROPERTY
10

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

Rejection of Work
3.5, 4.2.6, 12.2.1

Releases and Waivers of Liens
9.10.2

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

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, 3.12, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Special Inspections and Testing
4.2.6, 12.2.1, 13.5
Specifications, Definition of
1.1.6
Specifications
1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14
Statute of Limitations
13.7, 15.4.1.1
Stopping the Work
2.3, 9.7, 10.3, 14.1
Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, 11.3.7
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
4.1.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3
Surety
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7
Surety, Consent of
9.10.2, 9.10.3
Surveys
2.2.3
Suspension by the Owner for Convenience
14.3
Suspension of the Work
5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.7.4
Termination by the Contractor
14.1, 15.1.6
Termination by the Owner for Cause
5.4.1.1, 14.2, 15.1.6
Termination by the Owner for Convenience
14.4
Termination of the Architect

4.1.3
Termination of the Contractor
14.2.2
TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1, 12.2.1, **13.5**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5
Time Limits
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4
Time Limits on Claims
3.7.4, 10.2.8, **13.7**, 15.1.2
Title to Work
9.3.2, 9.3.3
Transmission of Data in Digital Form
1.6
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 7.3.4
Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.4.2
Waiver of Claims by the Contractor
9.10.5, 13.4.2, 15.1.6
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6
Waiver of Consequential Damages
14.2.4, 15.1.6
Waiver of Liens
9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, **11.3.7**
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7
Weather Delays
15.1.5.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Notice
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1
Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

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

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

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct,

but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

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

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled

to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

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

3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

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However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the

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Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

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

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

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

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

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the

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Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

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

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

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by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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discharging such lien, including all costs and reasonable attorneys' fees.

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

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

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

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

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

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

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

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

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

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

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

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

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

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

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring

the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

§ 11.3.7 WAIVERS OF SUBROGATION

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

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

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

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

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

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

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

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

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as

appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
2. An act of government, such as a declaration of national emergency that requires all Work to be stopped;
3. Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
4. The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

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

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

1. repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

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

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

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

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

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

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

§ 15.2 INITIAL DECISION

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

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

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

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

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

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

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

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

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

§ 15.3 MEDIATION

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

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

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

mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

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

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

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

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

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

01. GENERAL REQUIREMENTS:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division-1 Specification sections, apply to work of this section.

02. SCOPE:

1. The Architect/Engineer is the Author and therefore Prime Interpreter of all the documents.
2. If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of any part of the plans, specifications or other portion of the contract documents, he may submit to the Architect/Engineer a written request for an interpretation thereof.
 - (a). Any interpretation of the proposed documents will be made only by addendum duly issued or delivered to the exchanges and each person receiving a set of documents.
 - (b). The Architect or Owner will not be responsible for any other explanation or interpretation of the proposed documents. The act of submitting the bid without further qualification indicates the Contractor fully understands the Architect/Engineers design intent.

03. DRAWINGS, DETAILS & SPECIFICATIONS:

1. Plans and specifications for all phases of work are bound in a single set of plans and specifications for all Prime Bidding Contractors. All contractors shall review documents of all trades to fully inform themselves of all requirements before bidding. Reasonable diligence was used in preparation and detailing of documents, and submitted bids shall represent a complete functional product.
2. Figured dimensions shall be followed in preference to measurements by scale. Large scale drawings shall take precedence over those of a smaller scale.
3. Figures on all drawings, as the detail drawings themselves, are subject to measurements necessary in every case by adjacent or incorporated completed work. All such necessary measurements shall be taken before undertaking any work dependent upon such data.

04. SPECIFIED PRODUCTS, MATERIALS, AND EQUIPMENT:

1. Drawings and specifications are based upon quality products, materials, and equipment. Each division of the specifications generally will identify the manufacturer intended and used in the project design, identified as (specification reference). These materials set the minimum acceptable standards.
2. Designs are based upon current material and data provided the Architect. In the event the specified referenced product has changed, or needs modification, it is the bidders responsibility to notify the Architect of a change in writing before addenda's are issued in order that appropriate clarifications are made. Submission of a product bid confirms the equipment or material will perform as required and intended in the design. No claims for added costs will be allowed.

05. SUBSTITUTIONS:

1. In the spirit of competition, other product manufacturers are often listed under the approval section of each specification division. It is the responsibility of this manufacturer/vendor to examine plans and specifications, and quote their product equal to or exceeding the specification preference standard. In the event these manufacturer/vendors find a difference in their product, they shall be required to submit a request for a substitute prior approval.
2. No substitution will be considered prior to receipt of Bids unless written request for approval has been received by mail by the Architect/Engineer at least **seven (7) days prior to date for receipt of Bids**. Each such request shall include name of the material or equipment for which it is to be substituted and complete description of proposed substitute including drawings, cuts, color charts, performance and test data and any other information necessary for evaluation. Statement setting forth differences in proposed material or product from specified item, and any changes in other materials, equipment or other Work that the incorporation of substitute would require shall be included. Burden of proof of merit of proposed substitute is upon proposer. **Complete and submit included form (REQUEST FOR APPROVAL OF SUBSTITUTIONS) with request for approval.** Architect's approval of an item for previous project does not constitute approval for this Project. Architect will consider delivery time and availability of service as well as product itself, it acting on request for approval. Architect's decision of approval or disapproval of proposed substitution shall be final.
3. Only those requests for approval which include a stamped return envelope will be answered in writing by Architect.
4. If Architect approves any proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner. No claims for additional costs will be considered by a Vendor or Contractor due to substitution of a product.

END OF SECTION 01200

01. GENERAL REQUIREMENTS:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division-1 Specification sections, apply to work of this section.

02. SCOPE:

1. The Architect/Engineer are the Author and therefore Prime Interpreter of all the documents.
2. If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of any part of the plans, specifications or other portion of the contract documents, he may submit to the Architect/Engineer a written request for an interpretation thereof.
 - (a). Any interpretation of the proposed documents will be made only by addendum duly issued or delivered to the exchanges and each person receiving a set of documents.
 - (b). The Architect or Owner will not be responsible for any other explanation or interpretation of the proposed documents. The act of submitting the bid without further qualification indicates the Contractor fully understands the Architect/Engineers design intent.

03. DRAWINGS, DETAILS & SPECIFICATIONS:

1. Plans and specifications for all phases of work are bound in a single set of plans and specifications for all Prime Bidding Contractors. All contractors shall review documents of all trades to fully inform themselves of all requirements before bidding. Reasonable diligence was used in preparation and detailing of documents, and submitted bids shall represent a complete functional product.
2. Figured dimensions shall be followed in preference to measurements by scale. Large scale drawings shall take precedence over those of a smaller scale.
3. Figures on all drawings, as the detail drawings themselves, are subject to measurements necessary in every case by adjacent or incorporated completed work. All such necessary measurements shall be taken before undertaking any work dependent upon such data.

04. SPECIFIED PRODUCTS, MATERIALS, AND EQUIPMENT:

1. Drawings and specifications are based upon quality products, materials, and equipment. Each division of the specifications generally will identify the manufacturer intended and used in the project design, identified as (specification reference). These materials set the minimum acceptable standards.
2. Designs are based upon current material and data provided the Architect. In the event the specified referenced product has changed, or needs modification, it is the bidders responsibility to notify the Architect of a change in writing before addenda's are issued in order that appropriate clarifications are made. Submission of a product bid confirms the equipment or material will perform as required and intended in the design. No claims for added costs will be allowed.

05. SUBSTITUTIONS:

1. In the spirit of completion, other product manufacturers are often listed under the approval section of each specification division. It is the responsibility of this manufacturer/vendor to examine plans and specifications, and quote their product equal to or exceeding the specification preference standard. In the event these manufacturer/vendors find a difference in their product, they shall be required to submit a request for a substitute prior approval.
2. No substitution will be considered prior to receipt of Bids unless written request for approval has been received by mail by the Architect/Engineer at least **seven (7) days prior to date for receipt of Bids**. Each such request shall include name of the material or equipment for which it is to be substituted and complete description of proposed substitute including drawings, cuts, color charts, performance and test data and any other information necessary for evaluation. Statement setting forth differences in proposed material or product from specified item, and any changes in other materials, equipment or other Work that the incorporation of substitute would require shall be included. Burden of proof of merit of proposed substitute is upon proposed. **Complete and submit included form (REQUEST FOR APPROVAL OF SUBSTITUTIONS) with request for approval.** Architect's approval of an item for previous project does not constitute approval for this Project. Architect will consider delivery time and availability of service as well as product itself, it acting on request for approval. Architect's decision of approval or disapproval of proposed substitution shall be final.
3. Only those requests for approval which include a stamped return envelope will be answered in writing by Architect.
4. If Architect approves any proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner. No claims for additional costs will be considered by a Vendor or Contractor due to substitution of a product.

06. SHOP DRAWINGS:

1. Shop drawings include fabrication and installation drawings, setting diagrams, schedules, patterns, templates, and similar drawings. Include the following information:
 - a. Dimensions
 - b. Identification of products and materials included by sheet and detail number
 - c. Compliance with specified standards.
 - d. Notification of coordination requirements.
 - e. Notification of dimensions established by field measurement.
2. Shop Drawing Submittals: Contractors shall submit shop drawings in electronic form. All shop drawings shall be in the form of .PDF files submitted directly to the Architect or Engineer for which the shop drawing is intended.

07. SAMPLES:

1. Accuracy of Sample: Unless otherwise specifically directed by the Architect / Engineer, all samples shall be of the precise article proposed to be furnished and shall illustrate the functional and aesthetic characteristics of the product.

2. Number of Samples: Submit all samples in the quantity which is required to be returned plus three (3) which will be retained by the Architect / Engineer.

08. COLORS:

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

09. MANUALS:

1. Unless otherwise specifically directed by the Architect / Engineer elsewhere in the specifications, prepare all required manuals covering items included in this work in accordance with the following:
 - a. Provide three (3) copies of Operation and Maintenance manuals each bound in an indexed 3-ring binder.
 - b. Include the name of the project and the name of the submitting contractor on the cover.
 - c. Provide a master index at the beginning of the manual showing items included. Internally subdivide the binder contents with permanent page dividers, logically organized with tab titling clearly printed under reinforced laminated plastic tabs.
 - d. Organize all sections to correspond to specification sections.
 - e. Include copies of all approved shop drawings in the submittal.
 - f. Operating instructions shall include step by step instructions for each piece of equipment installed in the project. Instructions shall include installation instructions, part numbers and lists, operation instructions of equipment, name of vendor, and maintenance instructions.
 - g. Testing reports if applicable.
 - h. Include all warranty information within the submittal.

10. PROJECT RECORD DRAWINGS:

1. The General Contractor shall maintain a record set of blue line prints of contract drawings and shop drawings in clean, undamaged condition. All other contractors shall record work variations on the General Contractor's record set. Mark-up the set of record documents to show the actual installation where the installed work varies from the work as originally shown. Make whichever drawings are most capable of showing the actual "field" condition fully and accurately.
2. Mark record drawings with red erasable pencil and where feasible, use other colors to distinguish between variations in separate categories of work.
3. During the progress of work, the contractor shall keep accurate data on locations and elevations of underground or concealed work.

4. Organize record drawing sheets into manageable sets, bind with durable paper cover sheets, and print suitable titles, dates, and other identification on the cover of each set. Submit to Architect / Engineer.

5. **Final payment to contractors will not be released until accurate record drawings, operation and maintenance manuals have been received and accepted by the Architect / Engineer.**

END OF SECTION 01300

01. GENERAL REQUIREMENTS:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division-1 Specification sections, apply to work of this section.

.02 SCOPE OF WORK:

- a. Extent of work of this section includes all labor, material, equipment, and services necessary for and reasonably incidental to the testing of material as shown on the drawings and specified herein.
- b. Employment of testing laboratory shall in no way relieve Contractor of obligation to perform work in accordance with requirements of Contract Documents.
- c. The Testing Laboratory shall be retained by the Contractor, at no additional expense to the Owner. The Testing Laboratory shall act as the Owner's agent in all matters relating to material testing, and shall report to the Owner and take instructions from the Contractor after Owner and Architect or Engineer approval of instructions has been granted.
- d. It shall be the responsibility of all Contractors to familiarize themselves with all sections of these specifications to allow the Testing Laboratory to perform their duties at the proper sequence of construction without any hindrance or delays.
- e. Additional requirements for testing are described in various sections of these specifications.
- f. The General Contractor shall be responsible for retaining a prior approved single testing laboratory to perform all services including all mechanical and electrical for their respective work responsibility under this section.
- g. NOTE: The quality control testing required on this project is a significant part of the overall project. Bidder is CAUTIONED to thoroughly familiarize himself with the testing requirements and the costs to provide them.

.03 TESTING LABORATORY REQUIREMENTS:

- a. All testing laboratories desiring to provide services for this project must receive written approval from the Owner prior to bidding.
 - (1) The Testing Laboratory must meet the requirements of the American Council of Independent Laboratories (ACIL) and be authorized to operate in the state of North Dakota.
 - (2) The Testing Laboratory must furnish, to the Owner's satisfaction, documentation of an in-house quality assurance program.
 - (3) The Testing Laboratory shall provide, to the Owner's satisfaction, a current certificate of insurance stating limits of liability coverage to include professional liability coverage if applicable.

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- (4) The Testing Laboratory must maintain a full-time registered professional engineer with a minimum of five (5) years experience in the types of testing required under this Contract to review all required testing services.
 - (5) Each person in charge of laboratory testing, field testing, and inspection must have not less than one (1) year of full-time experience in the duties required to be performed under this Contract and shall perform such duties only under the direct supervision of a registered engineer.
- b. The Testing Laboratory shall perform all tests described herein and any additional tests requested by Owner. When it appears that the material furnished, or work performed by the Contractor, fails to meet the construction contract requirements, the Testing Laboratory shall direct the attention of the Owner, Architect and Engineers to such failure.
- c. Meetings: Representatives of the Testing Laboratory shall attend pre-construction conferences and all project progress meetings when so directed by Owner, Architect, Engineers, and/or respective Contractor, at no additional cost to the Owner.
- d. Written Reports: Submit all test reports to Owner, Architect, respective Engineer (if applicable), respective Contractor and respective subcontractor (if applicable) within seventy-two (72) hours after each test is completed unless specified otherwise in these specifications.
- e. Verbal Reports: Testing Laboratory is to give verbal notification, to Owner, Architect and Engineers, immediately, of any irregularity to ensure all necessary retesting and/or replacement of material with the least possible delay in progress of the Work.
- f. Test Standards: Testing Laboratory shall furnish the Owner, Architect and Engineer, upon request, one (1) copy of each standard (ASTM, AASHTO, and AWS) referred to or which is pertinent to these specifications.
- g. Resumes: Testing laboratory will provide current resumes of engineers and technicians to be employed on this job.
- h. The testing requirements shall remain in force for the full duration of the construction contract, including all delays or time extensions.

.04 PAYMENT FOR TESTING SERVICES:

- a. Initial Services:
- (1) The respective Contractor will pay for all initial testing services requested by these specifications. Costs for all such testing services shall be included in respective Contractor's proposal.
 - (2) The respective Contractor will pay for all initial testing services requested by the Owner which are not specifically required by these specifications, and upon completion and acceptance of all work, an equitable adjustment shall be effected thereof by appropriate Change Order EXCEPT that, if such initial tests indicate noncompliance with the Contract Documents, the costs of initial tests associated with that noncompliance shall be borne entirely by the respective Contractor.

b. Retesting: When initial tests indicate noncompliance with the Contract Documents, all subsequent retesting occasioned by the noncompliance shall be performed by the same Testing Laboratory and the costs thereof will be borne entirely by the respective Contractor.

.05 TAKING SPECIMENS:

a. All specimens and samples for testing will be taken only by the Testing Laboratory; all sampling equipment and personnel will be provided by the Testing Laboratory; and all deliveries of specimens and samples to the Testing Laboratory will be performed only by the Testing Laboratory.

b. Contractors shall provide representatives of the Testing Laboratory access to the work at all times in order that the Laboratory may properly perform its functions.

.06 SCHEDULES FOR TESTING:

a. Establishing Schedule: By advance discussion with the Testing Laboratory, the Contractors shall determine the time required for the Laboratory to perform its tests and to issue each of its findings.

b. When changes of construction schedule are necessary during construction, the Contractors shall coordinate all such changes of schedule with the Testing Laboratory.

c. When the Testing Laboratory is ready to test specimens but cannot due to incompleteness of the work, all extra costs for testing attributable to the delay will be backcharged to the respective Contractor and shall not be borne by the Owner.

.07 CODE COMPLIANCE TESTING:

Inspections and tests required by codes or ordinances, or by a plan approval authority, and made by a legally constituted authority, shall be the responsibility of and shall be paid for by the respective Contractor, unless otherwise provided in the Contract Documents.

.08 CONTRACTOR'S CONVENIENCE TESTING:

Inspection or testing performed exclusively for a Contractor's convenience shall be the sole responsibility of the respective Contractor.

.09 GRADING:

The grading subcontractor shall submit to the Testing Laboratory, for approval, a completed grading and earthwork plan, including the source(s) of all engineered fill materials; all of which shall be approved by the Civil Engineer prior to the commencement of any grading operations.

.10 EXCAVATION & BACKFILLING AND SUBGRADE:

a. A registered Civil Engineer with a minimum of 5 years of providing geotechnical observation experience and prior approval by Owner and Engineer, representing the Testing Laboratory, shall observe all site excavations prior to the placement of any engineered fill and footings, including excavation over-size.

b. The Testing Laboratory shall test and approve each lift placed prior to the placement of any additional lifts. Maximum depth of clay engineered fill - 6 inches. Maximum depth of granular engineered fill - 1 foot.

- (1) Determine maximum density and optimum moisture content of each type of fill, backfill and subgrade material using ASTM D698-Standard Proctor, "Moisture-Density Relations of Soils."
- (2) Conduct field density tests in accordance with ASTM D1556, "Density of Soil In-Place by the Sand-Cone Method"; or ASTM D2922, "Density of Soil and Soil-Aggregate In-Place by Nuclear Methods".
 - (a) One test for each 250 square yards of sub-base.
 - (b) One test for each 250 square yards per one foot lift, or fraction thereof, of fill or backfill.
 - (c) One test for each 250 square yards of subgrade.
 - (d) One test for each 200 linear feet of sidewalk and curb and gutter.
 - (e) One test along trenches at maximum 100 foot intervals per 18 inches of vertical lift and at changes in required density EXCEPT for non-paved areas where tests shall be at maximum 100 foot intervals per 3 feet of vertical lift.
 - (f) One test for each 200 linear feet of electrical/communication trenching.
 - (g) For each isolated parcel less than 250 square yards, 200 linear feet and 100 foot intervals per 18 inch lift (or 3 foot lift if applicable), take at least two tests.

c. The Soils Engineer shall observe and approve the final excavated subgrade elevations prior to the placement of any sub-base, base and pavement materials.

d. The Testing Laboratory shall observe and approve of all dewatering procedures during construction operations. Testing Laboratory shall make a written report concerning conditions of site during every site visitation. This shall include any observed items which might affect the project quality (including but not limited to the following: site dewatering, covering partially completed masonry walls at days end, curing of concrete slabs, and protection of equipment and materials).

e. Furnish test reports in accordance with paragraph .03d.

END OF SECTION 01400

01. GENERAL REQUIREMENTS:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division-1 Specification sections, apply to work of this section.

02. SCOPE:

1. It shall be the responsibility of all Contractors to visit the area making themselves aware of all existing site conditions and requirements for new construction.
2. The General Contractor shall notify other Contractors of work schedules sufficiently in advance so they can cooperate with him and he is responsible for coordination.
3. The Contractors shall not stipulate in their proposals any conditions not contained in the form of proposal contained in the contract documents. Each bid shall include all labor, materials and equipment as called for in these specifications and as indicated on the plans.
4. The General Contractor shall be responsible for furnishing the Architect with a Construction Schedule which will be with reasonable accuracy, establish the time each division of work is to be performed and such schedule must be prepared and presented promptly after the contracts have been signed.
5. Within (10) ten days after a Notice To Proceed, the successful bidder shall submit to the Architect a list of all subcontractors and suppliers whose work and material the bidder proposes to use on the project. After approval of such list, it may not be changed without written permission of the Architect.
6. The General Contractor shall diligently pursue work as promptly as possible. He shall install a construction office on the site and maintain a set of plans, specifications and approved shop drawings in the office at all times.
 - (a). Contractor shall maintain in job shack only approved stamped shop drawings on jobsite indexed according with specification divisions.
 - (b). Contractor shall maintain a marked master set of drawings and specifications that reference addenda items by division. Enter all addenda modifications on drawings and specifications.
7. The General contractor shall employ an experienced full time project Superintendent for the term of the project. The Superintendent shall not be changed during the project, and the Contractor shall be prepared to submit favorable recommendations from (3) three other Architects of similar projects attesting Superintendents Performance.
8. Each Contractor shall be held responsible for his own clean-up upon completion of his work, at the end of each day. (See Section 01650).
9. Contractor is responsible to immediately inform Architect of any discrepancies.

END OF SECTION 01500

01. GENERAL REQUIREMENTS:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division-1 Specification sections, apply to work of this section.

02. SCOPE:

1. Bidders shall inform themselves of the conditions under which the work is to be performed concerning the site of work, the structure of the ground, obstacles which may be encountered and all other relevant matters concerning the work to be performed and if awarded the contract, shall not be allowed any extra compensation by reason of any matter of things concerning which such bidder might have fully informed himself, because of his failure to have so informed himself prior to the bidding, such methods and means of carrying out his work as will not cause any interruption or interference with any other Contractors.
2. The bidder is expected to base his bid on materials and equipment complying fully with the plans and specifications, and in the event he names in his bid materials or equipment which do not conform, he shall be responsible to supply the specified material or equipment at no change in bid price.
3. All plans and specifications are bound as bidding documents. Each Contractor when preparing his bid, shall carefully review all other sections of the documents to fully inform himself of the work to be done. The Architect/Engineer is the Author and interpreter of these documents. All questions Contractors may have regarding intent or interpretation of project shall be asked before submission of bids in order that the addenda may clarify a condition for all. Questions regarding work after submission of bids will be responded to by Architect/Engineer by application of this project's design principles.
4. Any addenda, bulletins or interpretations issued during the time of bidding shall be covered in the proposal and in closing the contract will become a part thereof.

03. SIGNING OF BIDS:

1. Bids which are not signed by individuals making them should have attached thereto a power of attorney evidencing authority to sign the bid in the name of the person for which it is signed.
2. Bids which are signed for co-partnership should be signed by all of the copartners or an attorney-in-fact. If signed by an attorney-in-fact, there should be attached to the bid a power of attorney authority to sign the bid.

04. WITHDRAWAL OF BIDS:

1. Any bidder may withdraw his bid at any time prior to the scheduled closing time for the receipt of bids, but no bid shall be withdrawn for a period of (30) thirty days after the scheduled closing time for the receipt of bids.

05. CONTRACTORS LICENSE:

1. All bids and proposals for the construction of any public contract project subject to the provisions of this chapter shall contain a statement showing that the bidder or Contractor is duly and regularly licensed hereunder.

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- (a). A Contractor must be the holder of a license at least (10) ten days prior to the date set for receiving bids, to be a qualified bidder.
 - (b). No contract shall be awarded to any Contractor unless he is the holder of a license in the Class within which the value of the project shall fall as herein - before provided.
 - (c). A current copy of the Contractors Renewal Certificate shall be included in the envelope marked Bid Bond.

06. FILING OF BIDS:

1. Bidders must submit bids on attached forms in duplicate.
2. Proposals shall be turned into the Owner in a sealed bid envelope with the following information plainly marked on its exterior.
 - (a). **The Class of License held by the Bidder.**
 - (b). **The Number of the Bidders License.**
 - (c). **The name and address, of person, firm, or corporation submitting the bid in the upper left hand corner.**
 - (d). **Name of Project in lower left hand corner.**
 - (e). **Acknowledge of receipt of ALL General, Mechanical, & Electrical addenda.**

A bid submitted without this information on the exterior of the envelope shall not be considered and shall be returned to the bidder.

3. Attached to the bid envelope a separate sealed envelope marked bid bond shall contain:
 - (a). Bid Bond in the amount of 5% of the total bid amount
 - (b). Current copy of Contractors License Renewal.
4. There shall be **NO additions or deletions to the bid amount written on the outside of the bid envelope.** All bid amounts must be fully tabulated on the provided bid form. Any bid received with **additions or deletions marked on the outside of the envelope shall not be considered and shall be returned to the bidder.**

07. BID SECURITY:

1. Each bid shall be accompanied by a bid bond at least equal to five percent (5%) of the total amount of all proposals entered, payable without condition to the Owner.
2. The bid security which must accompany each bid is required as guarantee that the bidder will enter into a contract with the Owner for the work described in the proposal and furnish bond as specified. It will be opened and reviewed for conformance before bid is actually opened.

08. TERO:

1. TERO (Tribal Employment Rights Ordinance) shall be considered part of this project. Contact the TERO office for the proper version of the ordinance that applies to this project. For further information contact:
Tero Office
PO Box 900
Belcourt, ND 58316
Phone (701) 477-6451 Ext. 114

END OF SECTION 01600

01. GENERAL REQUIREMENTS:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division-1 Specification sections, apply to work of this section.

02. SCOPE:

1. Within ten (10) days after a Notice to Proceed is issued, the successful bidder shall submit to the Architect a Schedule of Values by specification division indicating separate labor and separate material costs for each section. Upon acceptance by Architect of this tabulation, Contractor may utilize this form for monthly progress payments.
2. Retainage shall be in the amount of (10%) of the completed work until the project is (50%) complete, at which time retainage shall be reduced to (5%) of the total contract.

03. PROJECT CLOSEOUT:

1. Prior to requesting Architects final inspection for certification, Contractor shall prepare his own list of work left to complete. In doing so he shall certify that:
 - (a). Contract Documents have been reviewed.
 - (b). Work has been checked for compliance with the Contract Documents.
 - (c). Work has been completed in accordance with the Contract Documents.
 - (d). Other than items identified, work is completed and ready for final inspection.
Submit list tabulation Architect for his determination if project is substantially complete and ready for final inspection.
2. Complete final cleaning up requirements, including touchup, repair and restoration of marred surfaces. (See Section 01650).
3. Each Prime Contractor shall arrange for each installer of work that requires regular or continuing maintenance, to meet at the site with the Owner's personnel to provide necessary basic instruction in the proper maintenance of the work. Such arrangements must be coordinated in advance with the Owner and Architect.
4. Each Prime Contractor shall furnish the Owner with (1) set of red line marked blueprint drawings:
 - (a). Contractor shall neatly document as built changes on the prints and return to the Architect within (10) ten days of Substantial Completion.
5. Each Prime Contractor shall provide the Owner with an indexed bound set of shop drawings in a (3) three ring binder. Exterior of binder shall have the project name neatly lettered on its cover. Included within the binder shall be an indexed copy of all warranties.
6. Other Sub-Contractors shall refer to their respective section of specifications for special drawings and manuals.
7. All Prime Contractors shall be responsible for instructional training to the Owner on the operation and maintenance of all equipment and building systems.

04. ACCEPTANCE AND FINAL PAYMENT:

1. Upon receipt of written notice from the Contractor that the work is ready for final inspection, the Architect and the Owner shall promptly make such inspection. Work shall be inspected and when not more than (10) ten minor items need correction, a Certificate of Substantial Completion will be issued providing the Owner can occupy the space. When the work

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- accepted under the contract and the contract fully performed, the Architect shall promptly issue a final approval over his own signature, stating that the work provided for in this contract has been completed and is accepted by the Owner under the terms and conditions thereof, and that the entire balance found due the Contractor and noted in said final certificate is due and payable.
2. Before issuance of final certificate, the Contractor shall submit evidence satisfactory to the Architect by way of lien waivers that all payrolls, materials, bills, and other indebtedness connected with the work have been paid.
 3. Final payment shall be due thirty (30) days after Substantial Completion of the work provided the work then fully completed, and the contract fully performed.
 4. If after the work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor, and the Architect so certified, the Owner shall upon certificate of the Architect and without terminating the contract, make payment of the balance due for the portion of the work fully completed and accepted. Such payment will be made under the terms and conditions governing final payment except that it shall not constitute a waiver of claims.

05. GUARANTEE:

1. The Contractor shall guarantee and make good without cost to the Owner any defects, settlement, shrinkage, or other faults in the work arising from improper materials, or workmanship which may appear within (1) one year after the acceptance of the work (except for specific guarantee of another length of time specified elsewhere), and shall keep in repair for the period free of expense to the Owner. Part of full payment for the work shall not relieve him in anyway from such responsibility.

END OF SECTION 01620

01. GENERAL REQUIREMENTS:

1. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division-1 Specification sections, apply to work of this section.

02. SCOPE:

1. Throughout the construction period, maintain the site in a standard of cleanliness as described in this Section.
2. In addition to standards described in this Section, comply with requirements for cleaning as described in pertinent other sections of these specifications.
3. Conduct daily inspection, and more often if necessary, to verify that requirements for cleanliness are being met.
4. Provide required personnel, equipment, and materials needed to maintain the specified standard of cleanliness.
5. Use only the cleaning materials and equipment which are compatible with the surface being cleaned, as recommended by the manufacturer of the material.

03. PROGRESS CLEANING:

1. General:
 - (a). Retain stored items in an orderly arrangement allowing maximum access, not impeding traffic or drainage, and providing required protection of materials.
 - (b). Do not allow accumulation of scrap, debris, waste material, and other items not required for construction of this Work.
 - (c). At least once each week, and more often if necessary, completely remove all scrap, debris, and waste material from the job site.
 - (d). Provide adequate storage for all items awaiting removal from the job site, observing requirements for fire protection and protection of the ecology.
2. Site:
 - (a). Daily, and more often if necessary, inspect the site and pick up all scrap, debris, and waste material. Remove such items to the place designated for their storage.
 - (b). Weekly, and more often if necessary, inspect all arrangement of materials stored on the site. Restack, tidy, or otherwise provide everything necessary to meet the requirements of subparagraph 1.a.above.
 - (c). Maintain the site in a neat and orderly condition at all times.

04. FINAL CLEANING:

1. General Contractor shall have overall responsibility for all final cleaning requirements unless otherwise specifically indicated.
2. "Clean," for the purpose of this section, and except as may be specifically provided otherwise, shall be interpreted as meaning the level of cleanliness generally provided by skilled cleaners using commercial quality building maintenance equipment and materials. Comply with all manufacturer instructions/recommendations regarding cleaning operations.

3. Prior to completion of the Work, respective Contractors shall remove from the job site all tools, surplus materials, equipment, scrap, debris, and waste; and conduct final progress cleaning as described in this section.
4. Site: Completely remove resultant debris.
5. Schedule final cleaning as approved by the Architect to enable the Owner to accept a completely clean work.
6. Architect shall be sole judge as to final cleaning responsibilities in case of dispute

END OF SECTION 01650

SECTION 01720 – STAKING AND CONSTRUCTION SURVEYING

PART 1 - GENERAL

1.1 SUMMARY

- A. This section outlines the staking and surveying work related to provide reference points in the field. Section clarifies staking provided to the Contractor and Contractor's responsibilities.
- B. Construction Surveys establish "control stakes" for basic line and grade used for project construction.
 - 1. Control stakes are used to check work for contract compliance.
- C. Set supplemental "working stakes" from control stakes when needed.
 - 1. Working stakes are used to perform the work and are provided by the contractor.

1.2 CONTRACTOR'S RESPONSIBILITY

- A. Notify the Owner at least fourteen (14) calendar days in advance of the times and places that staking will be needed.
- B. Set supplementary staking, grade staking, offsets, cut stakes, temporary bench marks, and control points necessary for contractor to complete the work in accordance with the plans and specifications.
- C. Provide all staking materials for contractor supplementary staking to include hubs, lath, flagging, paint and other material needed to provide construction staking.
- D. Request clarification from the Owner regarding conflicts before proceeding with installation of facilities.
- E. Preserve all offset and reference staking, until such time as the pipeline or other facilities are installed.
- F. Reference stakes needing replacement due to Contractor error or negligence must be replaced by Contractor, at no cost to the contract.
- G. All permanent survey points/markers (i.e. property corners) and bench marks not directly in the line of work shall be preserved.

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- H. Replace all permanent survey markers disturbed or destroyed using a Professional Land Surveyor, at no cost to the contract.
 - I. Provide evidence of reestablishment of permanent survey markers to the Owner and copy of stamped and approved monument re-establishment documentation from the appropriate jurisdiction (state, BIA, etc.).

END OF SECTION

SECTION 02300 – EARTHWORK

PART 1 - GENERAL

1.1 SUMMARY

- A. This section includes rough and finished site grading of all areas disturbed during construction.

1.2 RELATED WORK

- A. Section 02230 – Site Clearing
- B. Section 02315 – Excavation, Trenching and Backfill
- C. Section 02370 - Temporary Erosion and Sediment Control
- D. Section 02920 – Topsoiling, Seeding, Fertilizing, and Mulching

PART 2 - PRODUCTS (NOT APPLICABLE)

PART 3 - EXECUTION

3.1 ROUGH GRADING

- A. Grade the area in the vicinity of the excavation to prevent surface water from flowing into the excavation.
- B. Maintain existing drainage.

3.2 FINISH GRADING

- A. Grade site to true grades as specified on the plans after all structures and piping have been installed.
- B. Provide a smooth transition between adjacent existing grades and new grades.
- C. Grade sites for effective drainage away from structures and to prevent ponding.
- D. Dress and trim all slopes.

- E. Drag all disturbed areas utilizing a box drag or by another attachment or method submitted to and approved by the Owner.
- F. Hand rake areas inaccessible to mechanical means.
- G. Remove all objectionable foreign matter, wood, metal, and stones over 2-inches in diameter and dispose of by an approved method off site.

END OF SECTION

SECTION 02330 – ACCESS ROAD & GRAVEL SURFACING

PART 1 - GENERAL

1.1 SUMMARY

- A. This section covers the construction of new and existing gravel surfaced access roadways.

1.2 RELATED WORK

- A. Section 01720 – Construction Staking
- B. Section 02230 – Site Clearing
- C. Section 02300 – Earthwork
- D. Section 02315 – Excavation, Trenching, and Backfilling
- E. Section 02920 – Topsoiling, Seeding, Fertilizing, and Mulching

1.3 REFERENCES

- A. ASTM C117 – Standard Test Method for Materials Finer than No. 200 Sieve in Mineral Aggregates by Washing.
- B. ASTM C136 – Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates.
- C. ASTM D422 – Particle-Size Analysis of Soils
- D. ASTM D698 – Standard Test Methods for Moisture Density Relations of Soils and Soil-Aggregate Mixtures Using 5.5 lb. Rammer and 12-inch Drop [Standard Proctor Test].
- E. ASTM D1556 – Density of Soil In-Place by the Sand Cone Method.
- F. ASTM D3017 – Moisture Content of Soil and Soil-Aggregate In-Place by Nuclear Method.
- G. ASTM D4318 – Liquid Limit, Plastic Limit, and Plasticity Index of Soils.
- H. ASTM D6938 – Standard Test method for In-Place Density and Water content of Soil and Soil-Aggregate by Nuclear Methods.

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- I. North Dakota Department of Transportation, Standard Specifications for Road and Bridge Construction
 - J. Manual on Uniform Traffic Control Devices for Streets and Highways

1.4 SUBMITTALS

- A. Gradation test results for aggregates of Gravel Surfacing.
- B. Field density test results for Subgrade and Gravel Surfacing.
- C. Geotextile

1.5 QUALITY ASSURANCE

- A. The materials and construction methods specified herein are minimum requirements. Where the appropriate state/local codes require more stringent materials or execution methods, they shall apply.
- B. Notify the Owner of any planned deviation from these specifications before proceeding so any price changes or quantity adjustments may be made.
- C. Furnish copies of test reports to the Owner.

PART 2 - PRODUCTS

2.1 BORROW

- A. As identified in the plans.
- B. Shall consist of natural soils free from organic matter, frozen material, refuse, construction debris or other man-made items.

2.2 GEOTEXTILE

- A. Composed of long chain polymeric filaments (95 percent by weight, polyolefin, polyester, or polyimide) formed into woven fabric.
- B. Follow manufactures recommendations for storage on site.
- C. Meet or exceed characteristics as listed:

PROPERTY & TEST METHOD	MINIMUM VALUE
Grab Tensile Strength (ASTM D4632)	315 lbs.
Grab Elongation (ASTM D4632)	15%
Mullen Burst (ASTM D3786)	600 psi.

Puncture Strength (ASTM D4833)	120 lbs.
Trapezoid Tear (ASTM D4533)	120lbs.
Ultraviolet Stability 500hrs (ASTM D4355)	70%
Permittivity (ASTM D4491)	0.05/sec
Apparent Opening Size (ASTM D4751)	40 U.S. sieve
Flow Rate Minimum (ASTM D4491)	4 gal./min./ft ²

2.3 GRAVEL SURFACING

- A. The aggregate for surfacing shall consist of sound durable particles of gravel, with which may include limited amounts of fine soil particles.
- B. Meet the following characteristics:

SIEVE SIZE	PERCENT PASSING
¾ inch	100
No. 4	50-78
No. 8	37-67
No. 40	13-35
No. 200	4.0-15.0
Plasticity Index	4-12
Processing Required	crushed

- 1. Fraction passing the No. 200 sieve: not be greater than two-thirds (2/3) of the fraction passing the No. 40 sieve.
- 2. Exceeding the upper limit specified for the No. 200 sieve will not be allowed.

PART 3 - EXECUTION

3.1 GENERAL

- A. Obtain all necessary permits and bonding required.
- B. Comply with the standards and construction requirements of the applicable local, municipal, county, state, and federal highway authorities.
- C. Observe all prescribed traffic safety regulations.
- D. Grade the access road to the alignment and profile as specified in the plan set and staked by the Project Engineer.
- E. Scarify the top 12 inches of subgrade and compact to 95% of specified density prior placing fill.

-
- F. Uniformly apply water by tank truck in the amounts necessary to produce the optimum moisture content. Mix water with the soil by means of a spring tooth or disc harrows.
 - G. Control the moisture content of the soil to assist in obtaining the specified density. Maintain the moisture content of the soil at 2-3 percent above optimum moisture.
 - H. Utilize a mechanical compaction method (sheepsfoot or peg tooth roller) until the embankment becomes unyielding.
 - I. Re-compact final 12 inches of roadway construction to 95% of specified density requirements just prior to placement of the gravel surfacing.
 - J. If available, the in-place gravel may be salvaged and reused,
 - 1. When reusing gravel mix a minimum of 50% of the total depth specified with new gravel, unless otherwise specified.

3.2 TOPSOIL

- A. Topsoil shall be salvaged to a depth of 6 inches and stockpiled.
- B. The salvaged topsoil shall be replaced on the inslopes of the completed roadway.
- C. Seeding shall be accomplished per Section 02920.

3.3 EXCAVATION

- A. Excavate to the specified lines and grades per Sections 02300 and 02315.
- B. Make excavation true to the depths, slopes, grades, and lines as called for in the plans or as otherwise ordered and staked by the Owner or Project Engineer.
- C. Bench all constructed slopes in excess of 5:1 to reduce the potential for slope failure or slippage.
- D. Roadway finished grade tolerance: +/- 0.1 feet of the grade elevation.
- E. Slope tolerance: +/- 0.2:1 of the slope.
- F. Excavate without causing rutting, pumping or other disturbance to underlying materials.
- G. Over-excavation for removal of porous or unsuitable materials must be authorized and measured by the Owner and Project Engineer at the time the work is accomplished.

3.4 BORROW

- A. The Project Engineer will identify, stake, and cross-section the designated borrow area.
- B. Extra materials for embankment construction that are obtained by changing back slopes, widening ditches, or otherwise adjusting dimensions or elevations shown on the plans is not considered borrow.
- C. Compact borrow fill in 6 inch maximum lifts using a mechanical compactor as per the specification where the borrow soil is being placed.

3.5 WASTE MATERIAL

- A. Remove and waste unsuitable or excess material in the designated area as directed by the Owner.
- B. Compact waste material in 1-foot lifts using earthmoving equipment to provide wheel compaction during the haul cycles.

3.6 SUBGRADE

- A. Stockpile material for backfilling.
- B. Compact subgrade in 6 inch lifts using a mechanical compactor.
- C. Compact subgrade to a density no less than 90% of the maximum density determined by the Standard Proctor Test ASTM D698 and to within 3-feet of the finished grade.
- D. Within 3-feet of the surface compact subgrade to a density no less than 95% of the maximum density determined by the Standard Proctor Test ASTM D698.

3.7 GEOTEXTILE

- A. If required, place geotextile fabric on finished subgrade to a point 1 foot beyond gravel edge.
- B. Overlap geotextile fabric 3 feet in every direction.
- C. Repair damaged areas by cutting and splicing fabric and overlapping 3 feet in every direction.
- D. Traffic and dumping directly on the geotextile fabric is not permitted.

3.8 GRAVEL SURFACING

- A. Spread evenly to achieve the compacted layer of gravel as specified on the detail drawings.
- B. Watering and roller compaction.
 - 1. Roll simultaneously with the spreading and watering operations and continue in parallel overlapping strips until the entire area has been rolled at least twice.
 - 2. Utilize pneumatic tired rollers with an effective roller weight of not less than 250 pounds per inch of roller width.
 - 3. Vibratory compacting equipment may be used in lieu of the above specified rollers.

END OF SECTION

SECTION 02370 – EROSION AND SEDIMENT CONTROL

PART 1 - GENERAL

1.1 SUMMARY

- A. This section includes temporary erosion and sediment control measures by use of silt fences, hay bales, and erosion blankets. This is not intended to incorporate all available methodologies of temporary erosion and sediment control or supersede any state or Tribal laws.

1.2 RELATED WORK

- A. Section 02300 – Earthwork
- B. Section 02920 – Topsoiling, Seeding, Fertilizing, and Mulching

1.3 REFERENCES

- A. ASTM D4355 – Standard Test Method for Grab Deterioration of Geotextiles by Exposure to Light, Moisture and Heat in a Xenon Arc Type Apparatus
- B. ASTM D4632 – Standard Test Method for Grab Breaking Load and Elongation of Geotextiles
- C. ASTM D4751 – Standard Test Method for Determining Apparent Opening Size of a Geotextile
- D. EPA – Clean Water Act
- E. ND DOT – Erosion and Sediment Control Handbook
- F. MN PCA – Minnesota Pollution Control Agency Best Management Practices
- G. SD DOT – Construction Field Manual – Construction Site Management and Erosion and Sediment Control

1.4 SUBMITTALS

- A. Method of erosion control
- B. Silt fence and appurtenances
- C. Hay bales and appurtenances

D. Erosion blankets and appurtenances

E. Erosion control plan

1.5 DEFINITIONS

A. Erosion Control: Any practice that protects the soil surface and minimizes the amount of soil particles detached and transported by rainfall or wind. Erosion control is implemented as a source control.

B. Sediment Control: Any practice that traps the soil particles after they have been detached and transported. Sediment control begins with erosion control by minimizing the potential sources of sediment. The emphasis should be placed on providing a protective cover on the soil surface, diverting runoff so that it does not flow across disturbed areas, and preserving existing vegetation to maximize soil infiltration and capture sediment.

1.6 QUALITY ASSURANCE

A. Erosion control materials, methods, and practices shall conform to the strictest of applicable state or Tribal agency handbooks of Best Management Practices, laws established for the purpose of erosion control, or the specifications herein.

1.7 CLEANUP

A. Remove sediment deposits in a timely manner when deposits reach 1/3 the height of the silt fence or bale line.

1. Place in the topsoil stockpile area or area approved by the Owner.

B. Remove temporary erosion and sediment control measures only after the area has stabilized and vegetation has developed to the extent that further erosion is unlikely.

PART 2 - PRODUCTS

2.1 SILT FENCING

A. Applicability.

1. Heavy duty: General use during site grading to protect critical areas and navigable waters.

2. Standard: Light duty applications to protect temporary construction or to supplement the other types of silt fence.



3. Machine-slice: For most applications.
 - B. Geotextile uniform in texture and appearance and have no defects, flaws, or tears that would affect its physical properties as follows.

Description	Heavy Duty	Standard	Machine Slice
Type	woven	woven	monofilament
Width	48 inches	36 inches	36 inches
Minimum grab tensile Strength per ASTM D4632	100 pounds	100 pounds	130 pounds
Equivalent opening size per ASTM D4751	20-70 sieve	20-70 sieve	30-40 sieve
Minimum UV stability per ASTM D4355 500 hour	70%	70%	70%
Top fastening component	Overlap around woven wire backing	sewn-in cord	

C. Post properties.

Description	Heavy Duty	Standard	Machine Slice
Material	metal	wood	metal
Minimum size	1.25 pounds per foot	1.5 inch x 1.5 inch	1.25 pounds per foot
Minimum length	5 feet	4 feet	5 feet
Post fastener	No. 16 gauge wire hog rings	Gun staples 0.5 inches long	Plastic zip ties 50 pound tensile strength

D. Net Backing

1. Woven wire
2. Minimum 14-1/2 gauge
3. 2-6 inch mesh opening
4. Minimum 30 inch width
5. 100 pound per foot tensile strength per ASTM D4595
6. Minimum 70% UV stability per ASTM D4355 500 hour

E. All seams heat sealed or sewn

2.2 EROSION BALES

- A. Erosion bales may be used in lieu of silt fencing.
- B. Rectangular clean hay bales or straw bales free of noxious weeds.
- C. Twine bound.

D. Wood or steel anchor stakes.

1. Minimum 2 inch nominal x 2 inch nominal x 6 feet long (wood) or 5 foot (steel)

2.3 EROSION CONTROL BLANKETS

A. Blankets consist of softly barbed, interlocking, 100% bio or photodegradable, and weed seed free Aspen excelsior fibers

1. Curlex I or Curlex Double Net as manufactured by American Excelsior Company or approved equal rated for particular application slopes and velocities.
2. Minimum 4 foot blanket width.
3. Minimum No. 11 gauge “u” staples with 1-2 inch heads.
 - a. 6, 8, or 12 inch depending on soil.

2.4 OTHER

A. It may be necessary to implement other materials and methods to prevent erosion and sediment transport than those specified herein (e.g. areas of high flow, navigable water boundaries, etc.). Other materials and methods proposed by the Contractor shall conform to standards published by the applicable state or Tribal agency’s Best Management Practices (BMPs).

PART 3 - EXECUTION

3.1 INSTALLATION

A. Coordinate temporary and permanent erosion control measures to assure economical, effective, and continuous erosion control.

B. Divert drainage away from construction areas.

C. Perform construction in and adjacent to navigable waters in such a manner as to avoid washing, sloughing, or deposition of material into waters which will result in undue or avoidable contamination, pollution, or siltation.

D. Install silt fence as shown in the plans and/or to the contour of the slope such that flow approaches the fence at right angles.

1. Place in an arc or horseshoe shape with the ends pointing towards the slope.
2. Install the silt fence fabric and net backing on the upstream side of the post according to the embedment, spacing, and fastening requirements for each respective application type.

Description	Heavy Duty	Standard	Machine Slice
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Minimum embedment	2 feet	1.5 feet	2 feet
Maximum spacing	8 feet	8 feet	6 feet
Minimum fasteners per post	3	5	3

3. Maximum drainage area of 1/4 acre per 100 feet of fence.
4. Installation limitations are as follows with a maximum permissible slope of 2:1 with no interpolation between grade tiers (e.g. a 4:1 slope would have a maximum slope length of 15 feet).

Slope Steepness	Maximum Slope Length (feet)
2:1 (50%)	15
5:1 (20%)	25
10:1 (10%)	50
20:1 (5%)	75
100:1 (1%)	100

5. Compact the soil on the upslope side of the fence.
6. Maintain silt fences and ensure that they provide effective erosion and sediment control.

Problem	Corrective Maintenance
Undercutting of fence	Replace, rearrange, and/or re-grade
Collapsing of fence	Replace or rearrange Add bales, stakes, wire, or rock
Torn fabric	Replace Add bales, stakes, wire, or rock
Excessive sagging	Decrease spacing between posts Reinforce
Runoff escaping around fence	Lengthen fence

- E. Place bales as shown in the plans and/or to the contour of the slope such that flow approaches the bale wall at right angles.
 1. Installation limitations are the same as silt fence requirements for slope steepness and the corresponding maximum slope length.
 2. Place bales in a 4 inch deep trench on their side.
 3. Securely anchor each bale with stakes.
 4. Compact soil on the upslope side of bales.
 5. Fill gaps between bales with straw.
 6. Bales may be used as mulching material if they meet the specifications of Section 02920.
 7. Maintain bales and ensure that they provide effective erosion and sediment control.

Problem	Corrective Maintenance
Undercutting of bales	Replace or rearrange Add bales, stakes, wire, or rock
Displacing of bales	Replace or rearrange Reinforce with rock, bales, or basins
Gaps between bales	Replace or rearrange Stuff loose bale material in voids
Decomposing Bales	Replace as necessary
Runoff escaping around bales	Lengthen the bale check

- F. Install erosion control blankets where indicated in the plans and on slopes greater than 6:1 (16.67%).
1. Install in accordance with the manufacturer’s recommendations and within 48 hours of seeding completion per Section 02920.
 2. Unroll blankets longitudinally in the general direction of flow.
 - a. On slopes, blankets may be unrolled horizontally or vertically to the slope except for channels.
 - b. Overlap downstream blankets with upstream blankets.
 - c. Offset longitudinal overlaps of blankets away from the lowest point of a channel.
 3. Spread blanket evenly, smoothly, and without stretching.
 4. Ensure all parts of the blanket touch the soil.
 5. Staple using 3.5 staples per square yard as detailed in the plans.
 - a. Minimum 6 inch staples for firm soils.
 - b. Minimum 8 inch staples where both sod and mats are used.
 - c. Minimum 12 inch staples for loose soils.
 - d. 100% biodegradable staples designed for the blankets being used.
 6. Anchor all edges and ends appropriately as detailed in the plans.
 - a. Longitudinal overlaps a minimum of 2-4 inches in width.
 - b. Longitudinal ends at discontinuances of blanket area anchored with an 8-inch bury and 90 degree continuance 1 foot outward from the blanket area.
 - c. Transverse ends (roll ends) at discontinuances of blanket areas anchored with an 8-inch bury and 90 degree continuance 1 foot outward from the blanket area.
 - d. Stagger staples at the end of roll overlaps and end of role terminations.
 7. Trench flanks exposed to runoff or sheet flow per the manufacturer’s recommendations.

3.2 PREPARATION

-
- A. Grade the site to provide divergence of runoff around the disturbed area and to ensure effective placement of erosion and sediment control measures in accordance with Section 02300.
 - B. Remove all tree roots, stones larger than 2 inches, and all other obstructions where erosion blankets are to be laid.

3.3 FIELD QUALITY CONTROL

- A. Inspect erosion and sediment control measures daily and immediately following each rain event or rapid snow thaw to ensure effective operation and repair, replace, or reinforce any deficiencies.
- B. After placement, prohibit traffic; either by foot, vehicle or equipment over areas covered by erosion control blankets.

Replace all blankets displaced by excessive wind, water or other causes.

END OF SECTION

SECTION 02513
ASPHALT PAVING

PART 1 GENERAL**1.01 SECTION INCLUDES**

- A. Bituminous concrete paving.

1.02 RELATED REQUIREMENTS

- A. Section 02233 - Aggregate Base Courses: Aggregate base course.
- B. Section 03100 - Concrete Paving: Concrete substrate and concrete curbs.
- C. Section 32 1723.13 - Painted Pavement Markings
- D. Section 02532 - Manholes and Structures: Manholes including frames; gutter drainage grilles, covers, and frames for placement by this section.

1.03 REFERENCE STANDARDS

- A. ASTM D946 - Standard Specification for Penetration-Graded Asphalt Cement for Use in Pavement Construction.
- B. ASTM D2172 – Standard Test Methods for Quantitative Extraction of Asphalt Binder from Asphalt Mixtures.
- C. ASTM D2950 – Standard Test Method for Density of Bituminous Concrete in Place by Nuclear Methods.
- D. AASHTO T 2 – Sampling of Aggregates.
- E. AASHTO T 11 – Materials Finer than No. 200 Sieve by Washing.
- F. AASHTO T 27 – Sieve Analysis of Fine and Coarse Aggregates.
- G. AASHTO T 209 – Standard Method of Test for Theoretical Maximum Specific Gravity and Density of Asphalt Mixtures.
- H. NDDOT Standard Specification for Road and Bridge Construction.

1.04 QUALITY ASSURANCE

- A. Perform Work in accordance with North Dakota Department of Transportation standard specifications.
- B. Provide Architect with Manufacturers written certification that each transport load of asphalt cement (A.C.) meets the requirements of the specification.
- C. Mixing Plant: Conform to North Dakota Department of Transportation standard specifications.
- D. Obtain asphaltic mix materials (aggregate and bitumen) from same source throughout entire project. Provide new mix design any time a change in source is made.

1.05 REGULATORY REQUIREMENTS

- A. Conform to applicable code for paving work on public property.

1.06 FIELD CONDITIONS

- A. Do not place asphalt when ambient air or base surface temperature is less than 40 degrees F, or surface is wet or frozen.

PART 2 PRODUCTS**2.01 MATERIALS**

- A. Asphalt Cement: ASTM D946; In accordance with the requirements of Section 818 of the NDDOT Standard Specifications (PG 58-28).
- B. Aggregate for Mix: Conform to the requirements of Section 430.03B of the NDDOT Standard Specifications.
- C. Tack Coat: Emulsified asphalt. SS-1H or CSS-1H Emulsion.

2.02 ASPHALT PAVING MIXES AND MIX DESIGN

- A. Use dry material to avoid foaming. Mix uniformly.
- B. Superpave FAA 43.
- C. Submit proposed mix design of each class of mix for review prior to beginning of work.

2.03 SOURCE QUALITY CONTROL

- A. Test mix design and samples in accordance with Section 430 of the NDDOT Standard Specifications.

PART 3 EXECUTION

3.01 EXAMINATION

- A. Verify that compacted subgrade and granular base is dry and ready to support paving and imposed loads.
- B. Verify gradients and elevations of base are correct.

3.02 PREPARATION - TACK COAT

- A. Apply tack coat in accordance with NDDOT Standard Specifications.
- B. Apply tack coat on asphalt or concrete surfaces over subgrade surface at uniform rate of 0.1 gal/sq yd.
- C. Apply tack coat to contact surfaces of curbs and gutters.
- D. Coat surfaces of manhole and catch basin frames with oil to prevent bond with asphalt pavement. Do not tack coat these surfaces.
- E. Always sweep and clean surface to be tack coated.
- F. Never apply more tack coating than can be covered by the same day's operation.

3.03 PLACING ASPHALT PAVEMENT

- A. Place asphalt within 24 hours of applying primer or tack coat.
- B. Place asphalt in lifts between 1.5 and 3.0 inches of compacted thickness. Leveling courses may be place with thickness less than 1.5 inches.
- C. Do not place bituminous mixture on a damp pavement surface, on frozen roadbed, or when weather conditions prevent proper handling and finishing of the bituminous mixtures.
- D. Use bituminous pavers to spread and finish mixtures to the required section leaving the mixture uniformly dense, smooth, and free from irregularities. In locations where it is impractical to use normal laydown equipment, other methods may be used if approved by the Engineer.
- E. Remove and replace material that is visibly segregated. If a paver placed the material, remove the segregated material to the full width of the paver. If the material was place by hand, remove the full area of segregate material, plus an addition 6 inches around the entire segregated area.

- F. Place pavement uniformly against the surface or edge of curb, gutters, manholes or structures, and at such an elevation so that the pavement is 1/4 inch higher than the edge of the structure after the pavement has been compacted.
- G. Adjust any casting that is not 1/4 inch below the top of the finished surface. Adjust casting upward if greater than 1/4 inch below the top of the finished surface.
- H. Maintain a mix laydown temperature of no less than 230 degrees F when ambient temperature is 60 degrees F or higher. When ambient temperature is below 60 degrees F, place mix with a minimum laydown temperature of 250 degrees F.
- I. Allow asphalt lift to be cool to 130 degrees F before placing subsequent lift.
- J. Compact pavement in accordance with Sections 430.04H and 430.04L of the NDDOT Standard Specifications.
- K. Tack all joints and coordinate vertical construction joints in successive courses so the joints do not fall on the same vertical plane.

3.04 TOLERANCES

- A. Flatness: Maximum variation of 3/8 inch measured with 10-foot straight edge.
- B. Compacted Thickness: Within 1/4 inch of specified or indicated thickness.
- C. Variation from True Elevation: Within 1/4 inch.

3.05 FIELD QUALITY CONTROL

- A. See Section 01400 - Testing, for general requirements for quality control.
- B. The Contractor shall engage an independent testing laboratory to determine the performance required. Additional testing required due to failed testing and/or substandard work shall be done at no cost to Owner.
- C. Compaction density testing shall be performed on compacted asphalt lifts in accordance with ASTM 2950.
 - 1. Results shall be evaluated in relation to the maximum theoretical density determined in accordance with AASHTO T 209.
 - 2. Compaction control test shall be performed at a rate of one test per 750 square yards of surface area per lift.
- D. Dry belt samples shall be taken in accordance with AASHTO T 2 and tested for gradation per AASHTO T 27 and fine aggregate angularity per AASHTO T 11.
 - 1. Samples shall be taken and tested for each increment of 1,000 tons of bituminous pavement produced with a minimum of one sample per project.
- E. Bituminous mixture sample shall be taken in accordance with AASHTO T 2.
 - 1. Test bituminous mixture sample for Theoretical Maximum Specific Gravity AASHTO T 209, Bulk Specific Gravity per AASHTO T 166 and Air Voids.
 - 2. Test bituminous mixture to determine the bitumen content by extraction in accordance with ASTM D2172. Gradation of the mineral aggregate shall also be determined after the extraction is made.
 - 3. Each test shall be taken in increments of 1000 tons of bituminous pavement produced with a minimum of one sample per project.
- D. If tests indicate work does not meet specified requirements, remove work, replace and retest at no cost to Owner.

3.06 PROTECTION

- A. Immediately after placement, protect pavement from mechanical injury for surface temperature is less than 140 degrees F (60 degrees C).
- B. Do not allow traffic on the completed surfacing until the mat has been compacted and has cooled sufficiently to prevent damage.
- C. Damage to the asphalt pavement due to inadequate protection shall be repaired by the Contractor to the satisfactions of the Engineer at no cost to the Owner.

END OF SECTION

SECTION 02920 – TOPSOILING, SEEDING, FERTILIZING, AND MULCHING

PART 1 - GENERAL

1.1 SUMMARY

- A. This section covers topsoiling, seeding, fertilizing, mulching, and punching areas disturbed by construction activities.

1.2 RELATED WORK

- A. Section 02300 – Earthwork
- B. Section 02315 – Excavation, Trenching, and Backfill
- C. Section 02316 – Rock Excavation

1.3 SUBMITTALS

- A. Fertilizer, methods and materials
- B. Seed mixture, methods and materials
- C. Mulch – methods and materials

1.4 QUALITY ASSURANCE

- A. The materials and construction methods specified herein are minimum requirements. Where the appropriate state/local codes require more stringent materials or execution methods, they shall apply.

PART 2 - PRODUCTS

2.1 TOPSOIL

- A. Native topsoil from stockpiles within project area.
 - 1. Containing organic material and nutrients suitable for plant growth.
 - 2. Free of debris, trash, large roots, sticks, frozen material, and rocks 3 inches and larger.
 - 3. Moisture content suitable for spreading and tilling.

2.2 FERTILIZER

- A. Conform to applicable state and tribal laws.

- B. Packaged in suitable containers.
 - 1. Labeled with manufacturer’s guaranteed analysis.
- C. Dry and free from lumps.
- D. Nutrients in either of the following two proportions.
 - 1. 18-46-0
 - a. Plant available nitrogen 18 pounds
 - b. Plant available phosphoric acid 46 pounds
 - c. Plant available potash 0 pounds
 - 2. 13-13-13
 - a. Plant available nitrogen 13 pounds
 - b. Plant available phosphoric acid 13 pounds
 - c. Plant available potash 13 pounds
- E. Apply fertilizer at the rate of 100 pounds per acre.

2.3 SEED MIXTURE

A. Rural / Road Ditch Mixture

- 1. Permanent seed mixture meeting the latest state/local standards.
- 2. Conforms to following mixture:

GRASS SPECIES	PURE LIVE SEED (PLS) (POUNDS/ACRE)
Western Wheatgrass	20
Intermediate Wheatgrass	20
	40

B. Urban / Lawn Mixture

- 1. Permanent seed mixture meeting the latest state/local standards.
- 2. Conforms to following mixture:

2.4 MULCHING MATERIAL

- A. Straw without excessive moisture content.
- B. Free of noxious weeds or other foreign matter.

PART 3 - EXECUTION

3.1 GENERAL

- A. Topsoiling, fertilizing, seeding, and mulching will only be permitted when soil and weather conditions are favorable.
 - 1. Satisfactory periods for planting are between April 1 and June 1, and between August 1 and September 15.
 - 2. Dormant late fall seeding may be completed with approval from the Owner.
 - 3. No seed shall be sown when the wind velocity exceeds 15 miles per hour.
 - 4. No seed shall be sown in standing water or frozen ground.

3.2 TOPSOILING

- A. After grading is complete spread topsoil over all disturbed areas.
 - 1. Apply to a depth of 6 inches.
- B. Remove surface irregularities within the area to be seeded by blading or by other suitable method.
- C. Till soil to a depth of approximately 2 inches, but do not exceed 3 inches.
 - 1. Complete tillage in a manner eliminating clumps of dirt larger than 2 inches in diameter.
- D. Seedbed shall be prepared smooth.
 - 1. Remove foreign matter including weeds, grubbed material, wood, metal, or stones 2 inches in diameter or larger.
 - 2. Accomplish final landscaping by harrowing, dragging, and raking to ensure uniform slope across the disturbed area.
 - 3. Leveling of a trench or site utilizing the bucket of a skid steer will not be approved.

3.3 FERTILIZING

- A. Apply fertilizer uniformly at a rate of 100 pounds/acre using mechanical spreading equipment, blowers, or hydraulic equipment approved by the Owner.
- B. Incorporate fertilizer into the seedbed by harrowing, dragging, or other satisfactory method to a depth of 1 to 3 inches.

-
- C. Never mix fertilizer with the seed, but it may be applied at the same time as the seed if a suitable fertilizer attachment on the drill is used.
 - D. Fertilizer may be mixed into a Hydro-Mulch mixture as it is applied.

3.4 SEEDING

- A. Sow seed within 48 hours of completion of seedbed preparation.
- B. Sow with mechanical seeding equipment that will provide uniform distribution at the specified rate.
 - 1. Seeders shall have agitators to provide continuous mixing of seed.
 - 2. Grain drills may be used only if equipped with seed attachments.
 - a. Operate to eliminate the effect of distinct rows of seeding.
- C. Seed shall be covered with topsoil to a depth of ¼ inch.
- D. Compact soil by rolling.
 - 1. Embed seed firmly.
 - 2. Complete seeding and rolling along the contours, at right angles to existing slopes.

3.5 MULCHING

- A. Place mulch within 48 hours of seeding.
 - 1. Mulch all seeded areas including the top surfaces of embankments, ditches, and all cut and fill slopes 6:1 or steeper.
 - 2. The Owner may vary application rates to provide a more stable mulch cover, to prevent erosion, and/or to encourage turf establishment.
- B. Blow mulch uniformly at a rate of 4,000 pounds of mulch per acre.
 - 1. Use a mulch blower designed for the purpose.
 - 2. Break straw bales before feeding into blower.
- C. Allow approximately 10% of the soil surface to be visible through the mulch blanket.
- D. Avoid excessive mulch cover which will smother seedlings.
- E. Do not apply mulch during periods of excessively high winds.
- F. Begin mulching on the windward side of the areas to be covered.

3.6 PUNCHING

- A. Punch mulch into soil immediately after application using a mulch tiller having:
1. A series of dull flat disks with notched or cutout edges.
 2. Disks 20 inches in diameter and ¼ inch thick.
 3. Disks spaced approximately 8 inches apart and fitted with scrapers.
 4. The total working width of the tiller shall not exceed 6 feet per section, but may be operated in gangs of up to 3 sections.
 5. Ballast tiller members as necessary to push straw into the soil approximately 3 inches with the ends of the straw exposed above the soil surface.
- B. The mulch tiller shall follow as closely as possible behind the mulch blower.
- C. Operate the mulch tiller along the contour.
- D. Multiple or diagonal mulch tiller passes may be required to ensure adequate anchoring of the mulch.
- E. Prohibit unnecessary foot, equipment, and vehicular traffic over the seeded and mulched areas.

END OF SECTION

**BELCOURT SCHOOL BUS GARAGE & HIGH SCHOOL PAVING
GENERAL BID FORM**

Belcourt, North Dakota

Duane Poitra, Business Manager
Belcourt School District #7
Belcourt, ND

Dear Mr. Poitra:

In compliance with your invitation to bid, the undersigned hereby proposes to furnish all labor, material, equipment and furnishings required for the **General Construction** of the **Belcourt School Bus Garage & High School Paving** project located in Belcourt, North Dakota as drawn, specified and detailed by Jiran Architects & Planners, P.C., and their Consultants, Bismarck, North Dakota including addenda's No. _____

BID ITEM #1 BUS GARAGE ASPHALT PAVING _____ DOLLARS (\$ _____).
State the amount of all labor, materials, and equipment for the complete asphalt paving work for the Belcourt School Bus Garage site.

BID ITEM #1 ALT. BUS GARAGE CONCRETE _____ DOLLARS (\$ _____).
State the amount of all labor, materials, and equipment for the alternate of concrete paving work for the Belcourt School Bus Garage site.

BID ITEM #2 HIGH SCHOOL ASPHALT PAVING _____ DOLLARS (\$ _____).
State the amount of all labor, materials, and equipment for the complete asphalt paving work for the Belcourt High School site.

BID ITEM #2 ALT. HIGH SCHOOL CONCRETE _____ DOLLARS (\$ _____).
State the amount of all labor, materials, and equipment for the alternate of concrete paving work for the Belcourt High School site.

TOTAL PROJECT ASPHALT PAVING _____ DOLLARS (\$ _____).
State the TOTAL amount of BID ITEM #1 and BID ITEM #2 for all labor, materials, and equipment for the complete asphalt paving work for the Belcourt School Bus Garage and the Belcourt High School sites.

TOTAL PROJECT ALT. CONCRETE _____ DOLLARS (\$ _____).
State the TOTAL amount of BID ITEM #1 and BID ITEM #2 for all labor, materials, and equipment for the alternate of concrete paving work for the Belcourt School Bus Garage and the Belcourt High School sites.

This bid may be withdrawn at anytime prior to the scheduled time of submittal or any authorized postponement thereof. The undersigned is a Licensed Contractor, Registered in the State of ND. under License No. _____, Class _____,

Renewed on _____ Day of _____, 20_____.

CONTRACTOR

BY

TITLE

Project #2601 Specifications to identify General & Electrical Construction for the **BELCOURT SCHOOL BUS GARAGE & HIGH SCHOOL PAVING** project located in Belcourt, North Dakota.

ARCHITECT

Jiran Architects & Planners, PC
1431 Interstate Loop
Bismarck, ND 58503
Phone (701) 258-7771
e-mail: jeff@jiranpc.com

CIVIL ENGINEER

Swenson, Hagen, & Co.
900 Basin Ave. #1
Bismarck, ND 58504
Phone (701) 223-2600
e-mail: jpetryszyn@swensonhagen.com

I hereby certify that this plan and specification was prepared by me or under my supervision and that I am a duly registered Architect under the laws of the State of North Dakota.



JEFF WELCH, AIA

REGISTERED NUMBER 1274

DATE March 16, 2026

The Belcourt School District #7 will receive bids on April 10, 2026 for the construction of the **BELCOURT SCHOOL BUS GARAGE & HIGH SCHOOL PAVING**. Bids shall be received at Belcourt School District #7, Attn: Duane Poitra, Business Manager 1207 William Hardesty St. Belcourt, ND 58316 until Friday, April 10, 2026 at 1:00 PM. Central Time at which time qualified submittals will be publicly opened and read.

Major items include 12" Subgrade Preparation 3,800 SF (Bus Garage) & 1,800 SF (High School), 6" Class V Gravel 1,270 TON (Bus Garage) & 575 TONS (High School), 5" Asphalt Pavement FAA 43 (Base Bid) 1,060 TONS (Bus Garage) & 500 TONS (High School), 6" Concrete Alt #1 15,200 SF (High School), Seeding and Mulching 1 LSUM and related items.

Single Prime Bids submitted must be accompanied by a Bond payable to Belcourt School District #7 in the amount equal to five percent (5%) of the bid. This is to serve as a guarantee that the bidder will enter into a Contract for the performance of such work if the Contract is awarded to him. Only bids, which are accompanied by such bond with associated proof of surety, will be considered.

All bids will be made on the basis of cash payment for such work. After bid opening the Owner will return the bid security of all except the lowest responsible bidders. When the Contract is awarded, the remaining unsuccessful bidder's bond will be returned. The Owner reserves the right to reject any or all bids, and further reserves the right to award the Contract in the best interests of the Owner. The Owner reserves the right to hold the low bids for a period of thirty (30) days after the date of the bid opening.

Each Contractor shall comply with TERO Regulations represented in the specifications for the Turtle Mountain Chippewa Reservation. Prime bidding contractors shall include an identified 3% Fee based upon their contract quote. Belcourt School District #7 expects all Contractors to utilize to the greatest extent feasible, Certified Minority Contractors, subcontractors, and vendors in good standing with the North Dakota Minority Contractors Association. Contractors will be responsible for an EPA fee in the amount of 1% of their contract quote.

Plans and specifications will be available at the following recognized Builders Exchanges for examination: Bismarck-Mandan Exchange, Construction Plans of Bismarck, Minot, Grand Forks, and Fargo all of North Dakota. Construction Industry Center of South Dakota. Minneapolis, St. Paul, Reed Construction Data and McGraw-Hill Dodge Planroom; all of Minnesota.

The documents may further be reviewed in the office of the Owner or Architect, Jiran Architects & Planners, P.C. Bidding Contractors having the proper class of North Dakota Contractor's License may obtain digital copies of the documents by contracting Jeff Welch at 701-258-7771 jeff@jiranpc.com at no charge. Any Prime Contractor

wishing to bid on this project shall notify the Architect and supply complete contact information to ensure that all bidders are receiving the most current bidding information.

Any bid not prepared and submitted in accordance with the provisions hereof, shall be considered non-responsive. The Owner may waive any formalities, and retains the rights to reject any or all bids.

END OF NOTICE TO CONTRACTORS

PUBLIC NOTICE (April, 2019)

The Tribe is proposing to amend Title 32, the Tribal TERO Ordinance and is placing the following proposed amendments, additions or deletions to TERO Ordinance Sections 32.0403, 32.0408-A, 32.0408-B, 32.0408-C, 32.0501, 32.0502, 32.0503, 32.0201 out for public comment, with a proposal to exclude geographical limitation of Rolette County.

Copies of the proposed amendments are available on the Tribal Records Dept Facebook page, at the Tribal Records Dept located in the Tribal Headquarters, in the TM Times, on the website at: www.tmchippewa.com, or can be obtained in writing by request. Written comments are to be submitted by mail to PO Box 900, Belcourt, ND 58316, by fax to 701-477-0916 or by email to: tribalrecordsdept@yahoo.com. Please contact the Tribal Records Dept at 477-2600, 477-2602, 477-2677, 477-2664 or 477-2616 if there are any questions.

RESOLUTION NUMBER **TMBC235-04-19** OF THE DULY ELECTED AND CERTIFIED GOVERNING BODY OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

WHEREAS, the Turtle Mountain Band of Chippewa Indians, hereinafter referred to as the Tribe, is an unincorporated Band acting under a revised Constitution and By-Laws approved by the Secretary of the Interior on June 16th, 1959 and amendments thereto approved; and

WHEREAS, Article IX (a) Section 1 of the Turtle Mountain Constitution and By-Laws empowers the Tribal Council with the authority to represent the Band and to negotiate with Federal, State, and Local Governments and with private persons; and

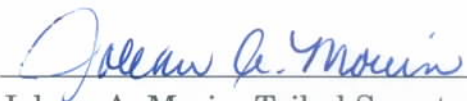
WHEREAS, Article IX (a) Section 1 of the Turtle Mountain Constitution and Bylaws requires a 30-day comment period prior to the adoption of any ordinances or amendments to the Tribal Code, whether proposed by resolution or otherwise. Adoption must occur through a roll call vote of the Tribal Council at a publicly held meeting; and

WHEREAS, the Tribe is proposing to amend, add or delete various revisions to Title 32, the TERO Ordinance Sections 32.0403, 32.0408-A, 32.0408-B, 32.0408-C, 32.0501, 32.0502, 32.0503, 32.0201 and is placing said proposed amendments out for public comment; now

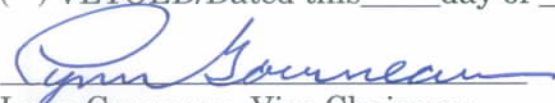
THEREFORE BE IT RESOLVED that the Tribe is placing the following proposed amendments, additions or deletions to Title 32, TERO Ordinance Sections 32.0403, 32.0408-A, 32.0408-B, 32.0408-C, 32.0501, 32.0502, 32.0503, 32.0201 out for public comment, with a proposal to exclude geographical limitation of Rolette County.

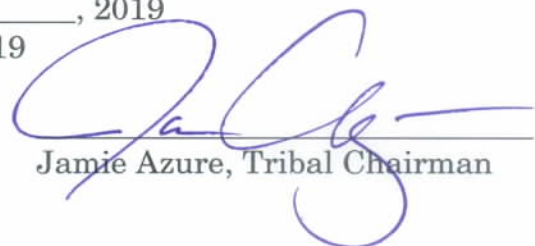
C E R T I F I C A T I O N

I, the undersigned Tribal Secretary of the Turtle Mountain Band of Chippewa Indians, do hereby certify that the Tribal Council is composed of **nine (9) members** of whom **six (6)** constituting a quorum were present at a meeting duly called, convened and held on the **10th day of April, 2019** that the foregoing resolution was adopted by an affirmative vote of **five (5) in favor** – Representatives Stuart LaFountain, Ron Trottier, Sr., Jim Baker, LoAnn Jerome and Chad Counts; **three (3) absent** – Representative Nathan Davis, Carson Belgarde and Chairman Jamie Azure; with the Vice-Chairman not voting.


Joleen A. Morin, Tribal Secretary 4/30/19

() SIGNED INTO LAW/Dated this 30⁺ day of April, 2019
() VETOED/Dated this ___ day of _____, 2019


Lynn Gourneau, Vice-Chairman


Jamie Azure, Tribal Chairman

TITLE 32
TRIBAL EMPLOYMENT RIGHTS ORDINANCE

CHAPTER 32.01
General Provisions and Purpose

32.0101

Name.

This Ordinance shall be known as the Turtle Mountain Band of Chippewa Indians Tribal Employment Rights Ordinance.

32.0102

Findings.

It is the policy of the Turtle Mountain Tribal Council to promote employment opportunities for Indians and business opportunities for Indian firms and contractors, and to provide direction, management and business standards for the Turtle Mountain Indian Reservation. The work force of the Tribe must be given an opportunity to gain employment on or off the reservation and the Tribal council will promote that preference in harmony with congressional enactments giving Indians special employment rights. It is also the Council's responsibility to monitor Indian preference along with collecting from those doing business on the Turtle Mountain Indian Reservation a fair fee for that privilege. Thus, the Tribal Council has enacted and hereby amends an ordinance called "Tribal Employment Rights Ordinance (TERO)."

CHAPTER 32.02
Definitions

32.0201

Definitions.

Employers/contractors may seek clarification as to all TERO requirements and definitions at the pre-bid conference for any on-reservation construction project, or otherwise by directing inquiries to the Tribal TERO Commission.

1. "CHAIRMAN" shall mean the chairman of the Turtle Mountain Chippewa Tribal Employment Rights Commission.
2. "COMMISSION" shall mean the Turtle Mountain Chippewa Tribal Employment Rights Commission.
3. "COMMISSIONER" shall mean a Commissioner of the Turtle Mountain Chippewa Tribal Employment Rights Commission
4. "UNION" shall mean duly organized workers as recognized by any labor organization recognized as such under the national Labor Relations Act.
5. "COUNCIL" shall mean the Tribal Council of the Turtle Mountain Band of Chippewa Indians.
6. "TERO DIRECTOR" shall mean the individual hired by the Tribal Council to keep the Council, Commission, employees and employers informed of this Ordinance and its violations. The Director has authority to resolve informal disputes on behalf of the Commission.
7. "TERO" shall mean the Tribal Employment Rights Ordinance.
8. "EEOC" shall mean the Equal Employment Opportunities Commission of the United States.
9. "EMPLOYER" shall mean any person, business, company, contractor, subcontractor, or other entity located or engaged in work on the reservation, ~~or other tribal land owned by the Tribe,~~ employing one or more persons, and without regard for whether the employer or its owner is Indian or Non-Indian or a member of the Turtle Mountain Band of Chippewa Indians or not. The term "Employer" excludes federal, state, county and tribal government, ~~only if these employers do the work in house using their regular company employees and using their own company equipment without contracting any portion out.~~ Tribally-owned or tribally-chartered private, for profit corporations are employers under this definition. Tribally owned or tribally chartered, non-profit corporations are employers under this definition. Tribally chartered or state chartered non-profit corporations authorized by the Tribe to contract with any federal agency pursuant to P.L. 93-638 or to enter into a grant agreement

- pursuant to P.L. 100-297 are employers under this definition. Tribally owned corporations are employers under this definition.
10. An employer is "ENGAGED IN BUSINESS ON THE RESERVATION" if in connection with any portion of a business enterprise or specific project, contract or subcontract, the employer or any of its employees or agents performing work within the exterior boundaries of the reservation. Employers who have both on-reservation and off-reservation business locations shall also be subject to the TERO in their off-reservation locations if those off-reservation locations are on lands adjacent to the reservation.
 11. "Indian" shall mean any person recognized as an Indian by the United States Government pursuant to its trust responsibility. In complying with and implementing the TERO, following additional preferences shall be recognized and enforced.
 12. Indians residing in Rolette County, North Dakota. Indians residing in other counties in the State of North Dakota.
 13. Any Indian recognized by the U.S. Government pursuant to its trust responsibility wherever residing.
 14. The terms "RESIDENCE" or "RESIDING" shall mean the place of domicile of an applicant on the date the applicant seeks employment or contracting preference under the TERO and resides within 90 days prior to such application. Domicile shall mean the place where an individual Indian has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning;
 15. The term "INDIAN-OWNED BUSINESS" shall mean a business entity (in whatever form) of which at least 51% is owned by any federally recognized Indian Tribe or by Indians and which has been screened and certified as an "Indian-owned business" by the MBE/WBE office in Bismarck, North Dakota or the Indian Business Development Center in Bismarck. A copy of MBE/WBE certification will be furnished to the TERO Office.
 16. The term "JOINT VENTURE" shall require that any Tribal member (s) or Tribe who enters a Joint Venture contract must control at least 51% of the Joint Venture and receive at least 51% of profits of the Joint venture. The Joint Venture shall show proof of Joint Venture to the TERO office by providing copies of ownership, state contractors license, bond and liability insurance. The Joint Venture must be certified and screened by the MBE/WBE office in Bismarck, North Dakota.
 17. Any employer is "LOCATED ON THE RESERVATION" if in connection with any portion of a business enterprise or specific project contract or subcontract, he/she is doing business or performing work within the exterior boundaries of the reservation.
 18. The term "OFCCP" shall mean the Office of Federal Contract Compliance Programs of the United States.
 19. The term "RESERVATION" shall mean the Turtle Mountain Indian Reservation proper and all tribal land and trust property held by the U.S. Government for the Tribe in Rolette County, North Dakota, including all land within the exterior boundaries of said reservation proper and said tribal land and trust property.
 20. The term "SECRETARY" shall mean the Secretary of the Interior or his duly authorized representative.
 21. The term "TRIBE" shall mean the Turtle Mountain Band of Chippewa Indians.
 22. "KEY POSITION" means an ongoing position where a person is a permanent employee for a period of one year prior to the contract and it is vital to the contractor's ability to perform the contract as he bid it or to the special operation of a crew familiar with each other in their duties to perform, that said person or persons be used on the project in said position(s).
 23. MBE means "MINORITY BUSINESS ENTERPRISES". WBE means "WOMEN'S BUSINESS ENTERPRISE".
 24. "INFORMAL DISPUTE RESOLUTION"; Clarifying and trying to remedy a situation without a hearing. (See 32.0702, 32.0703 and 32.0704)

CHAPTER 32.03

Turtle Mountain Chippewa Tribal Employment Rights Commission.

32.0301

Appointment.

The Turtle Mountain Chippewa Tribal Employment Rights Commission shall consist of one council member (and one alternate council member) appointed by the Tribal Council, four members appointed by the Tribal Council at large from the reservation community. Chairman of the board will be appointed by the Tribal Council. The alternate council member may vote in place of the appointed council member in the absence of that member.

32.0302

Term of office.

Commissioners shall hold office for a period of two years. Commissioners shall hold office after expiration of their terms of office until their successors are duly appointed and approved.

32.0303

Removal from office.

A Commissioner may be removed from office by the Tribal Council upon conviction of a crime, or for gross neglect of duty, misfeasance of malfeasance in office, or ineligibility to serve as a Commissioner or where the Commissioner misses three consecutive meeting without good cause. Specific written charges shall be prepared and served upon the Commissioner by the Tribal council at least ten days before a Council hearing upon the matter, and he shall be given an opportunity to answer to the charges at the hearing, before Tribal Council action. If the Commissioner refuses to appear before the Tribal Council, the Council shall nonetheless proceed to vote upon his removal. The decision of the Council shall be final.

32.0304

Vacancy and interim appointment.

If a Commissioner shall die, resign, be incapacitated or leave the reservation or be removed from office, the Tribal Council shall appoint an eligible person to fill the vacant position for the remainder of the term of the office of the Commissioner whose position it has to fill.

32.0305

Chairman.

The Chairman of the Commissioner shall be appointed by the Tribal Council and will be liaison between the Council and the Commission when needed.

32.0306

Duties of commission.

The Commission shall administer the employment rights program of the Turtle Mountain Band of Chippewa Indians in accordance with this Ordinance.

32.0307

Powers of commission.

The Commission shall have the power:

1. To establish rules and regulations governing all activities of the Commission, subject to prior approval of the Tribal Council.
2. To set minimum wage scale for construction employment at the beginning of each calendar year (see Section 32.014), subject to prior approval of the Tribal Council.
3. To expend operating funds appropriated by the Council for the use of the Turtle Mountain Chippewa Tribal Employment Rights Program.
4. To obtain funding from federal, state or other sources to supplement Council appropriations, subject to prior approval of the Tribal Council.
5. To impose numerical hiring goals and timetables, specifying the fair minimum number of Indians an employer may hire by craft or skill level.
6. To promote employers to establish or participate in such training programs as the Commission deems appropriate to increase the pool of Indian eligible for employment on the reservation.
7. To assist the TERO Director in administering a tribal hiring hall.

8. To require that employers may hire non-Indians for non-key positions only after the tribal hiring hall has certified that qualified Indians are unavailable to fill vacant job positions.
9. To prohibit employers from using job qualifications criteria a personnel requirement that bar Indians from employment unless such criteria or requirements are required by business necessity. Commission regulations may adopt EEOC guidelines or may adopt additional requirements to eliminate employment barriers unique to Indians and the reservation, subject to prior approval of the Tribal Council.
10. To enter into agreements with the unions to insure union compliance with the Ordinance.
11. To give preference to Tribal and other Indian-owned business in the award of contracts or subcontractors.
12. To establish counseling programs to assist Indians to retail employment.
13. To hold hearings and to subpoena witnesses and documents in accordance with this Ordinance.
14. To require employers to submit reports and take all actions deemed necessary by the Commission for the fair and vigorous implementation of this Ordinance.
15. To enter into cooperative agreements with federal employments rights agencies such as EEOC and OFCCP to eliminate discrimination against Indians both on and off the Reservation.
16. To take such other actions as deemed necessary to achieve the purpose and objectives of the Turtle Mountain Chippewa Tribal Employment Rights Program established in this Ordinance.

In exercising the above-specified powers, the Commission shall have the discretion to implement certain powers only or to apply one or more such powers to limited classes or numbers of employers.

CHAPTER 32.04

Turtle Mountain Chippewa Tribal Employment Rights Program

32.0401

Coverage.

All employers are required to give preference to equally qualified Indians and non-members married to an enrolled tribal member of one-quarter (1/4) or more degree of Indian blood ~~and who resides in Rolette County~~, in hiring, promotion, training, and all other aspects of employment, contracting and subcontracting, and must comply with this Ordinance and the rules, regulations and orders of the Commission. The above requirements shall apply only to facilities or components or divisions of an employer located on or engaged in business on the reservation, or for employers who have both on-reservation and off-reservation business locations, the employer shall also be subject to this TERO in their off-reservation locations, if those off-reservation locations are on lands adjacent to the reservation.

32.0402

Contractors, subcontractors, and minority businesses.

The Indian preference requirements contained in the Ordinance shall be binding on all contractors, subcontractors, and minority businesses of employers, regardless of tier, shall be deemed a part of all resulting contract and specifications. The TERO Commission shall have the initial and primary responsibility for insuring that all contractors, subcontractors, and minority businesses comply with these requirements and contractors, subcontractors, and minority businesses shall be subject to penalties provided herein for violation of this Ordinance if the contractor or subcontractor, subcontractors, and minority businesses fails to comply.

32.0403

Minimum numerical goals and timetables for Indian employment.

The Commission will establish the minimum number of Indians, which ~~which is set at seventy five (75%) percent~~ each employer should employ on his work force during any year that he or any of his employees are located or engaged

in work on the reservation ~~or Tribal adjacent land~~. Noncompliance will require rational between employer and Commission. Numerical goals shall be set for each craft, skill area, classification, etc., used by the employer and shall include, but not be limited to, administrators, supervisory, and professional categories. The goals shall be expressed in terms of number of Indian employment as a percentage of the total man hours worked by the employer's workforce in the job classification involved. Numerical goals shall be based upon surveys of the available Indian manpower pool and of projected employment opportunities. Both the TERO Director and the License Compliance/Employment Officer shall be involved in the formation of hiring goals for each employer.

1. For new employer, the goals shall meet with the Commission or Director as long before he actually begins work as possible and shall furnish the Commission with a precise list of the number, the kind of employees he expects to employ. The Commission or Director shall then set specific goals and timetables for the employer after considering any special factors or goals into his plan for complying with this Ordinance and shall agree in writing to meet these goals. Any employer who fails to provide such a written agreement to the TERO Commission shall not be permitted to commence work on the reservation.
2. For an existing employer on the reservation, the goals shall be a percentage of the new employees expected to be employed during the ensuing year. The employer shall incorporate the goals into his plan for complying with this Ordinance and shall agree in writing to meet these goals. Any employer who fails to provide such a written statement will not be permitted to commence work on the reservation. The TERO Commission shall maintain on file the current plan of each employer authorized to undertake work on the reservation.
3. For both new and existing employers, the goals shall be reviewed by the Commission at least annually and shall be revised as necessary to reflect changes in the number of Indians available or changes in employer hiring plans. Each employer shall submit a monthly report to the Director on a form provided by the employer, indicating the number of Indians in his work force, how close he is to meeting his goals, all persons hired or fired during the month, the job positions involved and other information required by the Commission.
4. Each employer shall meet his minimum goals for the employment of Indians. Whenever the Commission or Director has reason to believe that an employer is violating this Ordinance by not meeting his goals, the Commission or Director may file a complaint and notify the employer of the alleged violation pursuant to Chapter 32.07 of this Ordinance. The Commission shall bear the initial burden of providing that an employer has failed to or is failing to meet its goals. Upon a prima facie proof of such failure, the employer shall then bear the burden of proving that it has met or is meeting its goals or has made a good faith effort to meet its goals. It shall not be an excuse for such failure that the union with which the employer has a collective bargaining agreement providing for exclusive referral failed to refer Indians.

32.0404

Training.

Every employer shall be required by the Commission to participate in training programs to assist Indians to become qualified in the various job classifications used by the employer. Every employer shall employ the maximum number of Indian trainees or apprentices possible. The ratio of Indian trainees to fully qualified workers shall be set by the Commission after consultation with employer. For construction projects, the number of Indian trainees shall be no less than the minimum ratio established by the Department of Labor (one trainee for every four journeyman). Every employer with a collective bargaining agreement with a union shall be required to obtain agreement from the union to establish an advanced journeyman upgrade and apprenticeship program.

32.0405

Qualified and personnel requirements.

Every employer is prohibited for using job qualification criteria or personnel requirements which bar Indians from employment. The Commission shall bear the initial burden of proving that a job qualification criterion or personnel requirements is not required by business necessity. Upon a prima facie proof that a job qualification or personnel criterion is not required necessity, employer shall then bear the burden of proving that it is. If that burden is not met, the employer will be required to eliminate the job qualification criterion or personnel acquirements at issue. In implementing this section, the Commission shall be guided by principles established in the EEOC in order to eliminate employment barriers unique to Indians and the reservation. If the employer and the Commission or Director is unable to agree upon any matter in this section, the Commission may invoke the hearing procedure provided in Chapter 32.07 of this Ordinance.

32.0406

Tribal hiring hall.

The Commission shall establish and administer a tribal hiring hall to assist employers in identifying and hiring qualified Indians in job positions, employ and supervise a License Compliance/Employment Officer to oversee the hiring hall, labor survey, and employee referral functions under this ordinance. An employer may recruit and hire workers from whatever sources are available to it and by whatever process it chooses, provided that it may not hire a non-Indian until it has given the Commission or Director a reasonable time to locate a qualified Indian and the tribal hiring hall has certified that a qualified Indian is unavailable to fill the vacant job position.

For purpose of this Ordinance, "reasonable time" shall be defined as follows: Three (3) working days to locate and refer a qualified Indian. The Commission may grant a waiver of these time periods upon a showing by the employer that such time periods impose an undue burden upon it. An employer subject to a collective bargaining agreement with the union shall be exempt from this procedure if the union agrees to refer Indians from a listing supplied by the Commission or Director. However, if any union fails to meet this obligation to refer Indians to an employer, the Commission or Director may require the employer to accept Indian referrals from sources other than the union.

In administering a tribal hiring hall, a hiring list may be maintained by the License Compliance/Employment Officer. Individuals who desire to obtain employment in areas within the scope of this TERO Ordinance may enter their names on this hiring list. Names shall be entered in chronological order by the date and time of sign-up. The list may be utilized by the License Compliance/Employment Officer on a first come, first served basis in placing individuals of comparable skills in various crafts with various employers: Comparably skilled individuals shall be referred for placement in the order their names appear on the list.

If any non-Indian worker is found to be employed in a job in violation of this section, the employer shall be required by the Commission or Director to remove employee immediately and said employer shall be subject to the penalties in Chapter 32.08 of this Ordinance.

32.0407

Counseling and support programs.

The Commission will establish counseling and other support programs to assist Indians to retain employment. Every employee shall be required to cooperate with the Commission regarding such counseling and support programs.

32.0408

Preference in contracting and subcontracting.

~~Every employer that is soliciting for bids or quotes in the Turtle Mountain Jurisdiction and Tribal adjacent land in an open market advertisement shall be awarded to the low responsible bidder with a percentage preference given to Indian Owned firm. 5% preference for Indian Owned Prime contractor and 10%~~

~~for Indian Owned Subcontractors and suppliers~~ Every employer shall give preference in the award of any contract or subcontract to Indian-Owned businesses, the names of which shall be supplied to the employer for their use. Employers shall be required to take every step feasible to identify or locate Indian-owned businesses. 10% preference will be given to qualified Indian-owned businesses ~~located in Rolette County~~. These businesses then must assume the responsibility of submitting timely bids or otherwise lose the right of being considered.

~~32.0408.01 Every prime contractor must list their subcontractors and suppliers for each contract to prevent bid shopping. Each contractor must have a valid Tribal License up to date through TERO in order for their bid to be considered.~~

~~32.0408.02 Every employer must provide a copy of current Liability Insurance to the TERO office before a TERO license is issued.~~

32.0409 Lay-offs.

In all lay-offs and reduction in force, no Indian worker shall be terminated if a non-Indian worker in the same job classification is still employed unless the termination is pursuant to a prior lay-off procedure agreed to by the Commission in writing. Unless otherwise agreed in advance per such lay-off procedure, the non-Indian must first be terminated if the Indian possesses the minimum qualifications for the job classification.

32.0410 Promotion.

Every employer shall give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For every supervisory position filled by a non-Indian, the employer shall file a report with the Commission stating what efforts were made to inform Indian workers about the position, what Indians, if any, applied for the position, and the reasons why each Indian was not hired for the position.

32.0411 Summer students.

Every employer shall give Indian students preferential consideration for summer student employment. The employer shall make every effort to promote after school, summer and vacation employment for Indian students.

CHAPTER 32.05
Fee Assessment

32.0500 Fee assessment.

Fee Assessment to Provide Tribal Revenue and Operation of the Commission Pursuant to Article 9, Sections 3 and 4 of the Turtle Mountain Band of Chippewa Indian Constitution.

32.0501 Contractors, subcontractors and minority businesses.

Every contractor, subcontractor or business entity with a negotiated contract of \$10,000 including all change orders or more shall pay a one-time fee of 3% 4% of the total amount of the contract. The fee will be paid in full when receiving first progress payment of within 45 days from date of award, or whichever comes later. This Ordinance shall apply, but not be limited to, the following categories of contractors, subcontractors or employers, Construction Contractors, Manufacturers, Materialmen and Suppliers. 4% 3% will also apply to Professional Services, ~~such as A/E Firms, Consultants and Legal Services, regardless of dollar amount. attorneys, and all educational purchases and contracted purposes, except for computers, reading books, classroom desks and classroom supplies and materials.~~

32.0502 Accounting.

~~Four (4%) percent TERO fees collected shall be paid to the TERO Office and deposited in a special account. One (1%) percent EPA fee collected will be transferred to the tribal landfill account and the remaining 3% percent will remain in the special account and will be used to support the TERO Program. Fees shall be paid to the TERO Office and placed in the general account, and the council shall appropriate funds for use by the commission.~~

32.0503 **Tribal business license.**

Any person, employer, or vendor doing business in the reservation shall be required to obtain and maintain in force a tribal business license before any work will commence. All licenses are issued annually, and must be renewed before due date of each calendar year. Tribal business license applications will be obtained at the TERO Office. Fees will not apply for educational purposes, except for new construction, remodeling and demolition. ~~Fees will apply to all educational purchases and contracted purposes, except computers, books, classroom desk and classroom supplies and materials.~~ (This last sentence was proposed to be moved to Section 32.0500 Fee assessment.)

CHAPTER 32.06
Compliance by Unions

32.0600 **Notice.**

Every union with a collective bargaining agreement with an employer must file a written agreement stating that the union will comply with this Ordinance and the rules, regulations and orders of the Commission. Until such agreement is filed with the Commission or Director, the employer may not commence work on the reservation.

32.0601 **Contents of union agreements.**

Every union agreement with an employer or filed with the Commission or Director must provide:

1. Indian Preference. The union will give absolute preference to Indian residents in job referrals regardless of which union referral list they are on.
2. Cooperation with Commission. The union will cooperate with the Commission or Director in all respects.
3. Registration. The union will establish a mechanism allowing Indians to register for job referral lists by telephone or mail.
4. Training Programs. The union will establish a journeyman upgrade and advanced apprenticeship program.
5. Include all Indians. The union will "include" all Indians who qualify for journeyman or apprenticeship status and wish to join the union.
6. Temporary Work Permits. The union will grant temporary work permits to Indians who do not wish to join the union.

32.0602 **Model union agreement.**

The employer will provide a model union agreement for use by all unions who have collective bargaining agreements with any employer.

32.0603 **Recognition of unions.**

Nothing herein or any activity by the Commission authorized hereby shall constitute official tribal recognition of any union or tribal endorsement of any union activities on the reservation. No union activities shall take place without prior approval of the Turtle Mountain Chippewa Tribal Council.

32.0604 **No waiver of sovereign immunity.**

Nothing in this Ordinance is a waiver of the Turtle Mountain Band of Chippewa Indian's sovereign immunity as against any person, agency or governmental entity including, but not limited to, the National Labor Relations Board and the Federal Office of Contract Compliance. Nothing in this Ordinance is a "consent to be sued" as defined by the Turtle Mountain Chippewa Tribal Code,

Section. The Tribe's sovereign immunity also extends to members of the TERO Commission and Staff.

CHAPTER 32.07
Complaints and Hearings

- 32.0701 **Notice.**
If a hearing is requested by the Commission or Director, an individual employee, or union pursuant to this section, a written notice of hearing shall be given to all parties concerned of the nature, time and place of the hearing and the evidence to be presented, and shall advise such parties of their rights to be present at the hearing, to present any testimony of witness and other evidence to be represented by counsel at their own expense, and that the Commission may be represented by general counsel for the Turtle Mountain Chippewa Tribe.
- 32.0702 **Commission complaint and procedure.**
If the Commission or Director believes that an employer, contractor, subcontractor, or union has failed to comply with the Ordinance or any rules, regulations or orders of the Commission, it may file a complaint and notify such party of the alleged violations. The Commission or Director will attempt to achieve an informal settlement of the matter, but if an informal settlement cannot be achieved, the Commission or Director may request a hearing upon the matter pursuant Section 32.0701
- 32.0703 **Individual complaint procedure.**
If an Indian believes that an employer has failed to comply with this Ordinance or rules, regulation or orders of the Commission, or believes he/she has been discriminated against by an employer because he/she is an Indian, he/she may file a complaint in writing with the Director specifying the alleged violation. Upon receipt of the complaint, the Director shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or Director may request a hearing upon the matter pursuant to Section 32.0701.
If an employer fires, lays off, or penalizes in any manner, an Indian employee who utilizes the individual complaint procedure provided herein or exercises any right provided herein, the employer shall be subject to the penalties in Chapter 32.08 of this Ordinance.
- 32.0704 **Employer or union complaint procedure.**
If an employer or union believes that any provision of this Ordinance or any rule, regulations or order of the Commission or Director is illegal or unclear, it may file a complaint in writing with the Director specifying the alleged illegality or error. Upon receipt of the complaint, the Director shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the employer, union or Commission may request a hearing upon the matter pursuant to Section 32.0701.
- 32.0705 **Hearing procedure.**
Hearing before the Commission shall be governed by the following rules of procedure:
1. All parties may present testimony of witnesses and other evidence and may be represented by counsel at their own expense.
 2. The Commission shall be responsible for taping the proceedings and preserving such tapes and all pleading and physical evidence submitted at the hearing. These items shall constitute the record on appeal if any appeal should be taken after the hearing.
 3. The Commission may have the advice and assistance at the hearing of general counsel for the Tribe.
 4. The Chairman of the Commission or the Vice Chairman may preside. No formal rules of evidence or procedure need to be followed, but the

- Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.
5. Any matter to be proven must be proven to the satisfaction of the Commission or by the preponderance of the evidence.
 6. The hearing may be continued at the discretion of the Commission or Director.
 7. At the final close of the hearing, the Commission may take immediate action or take the matter under advisement.
 8. The Commission or Director shall notify all parties within 30 days after its decision in the matter.
 9. The Commission may require the presence of persons and documents at the hearing by service of subpoena(s) issued by the Commission.
 10. Any party leaving a scheduled meeting will be subject to entry of an adverse finding by default, unless authorized by the Commission.
 11. Any party not appearing for a scheduled meeting will be subject to an adverse finding by default unless prior written approval must be submitted in writing to the Director.
 12. Complaints must be filed within 30 days of incident with the TERO Office otherwise complaint will not be processed.

CHAPTER 32.08
Penalties for Violation

32.0801 **Penalties for violation.**

Any employer, contractor, subcontractor or union who violates this Ordinance or rules, regulations or orders of this Commission shall be subject to penalties for such violations, including, but not limited to:

1. Denial of right to commence or continue business inside the reservation or Adjacent Tribal Land.
2. Suspension of all operations inside the reservation.
3. Payment of back pay and damages to compensate any injured party.
4. An order to summarily remove employees hired in violation of this Ordinance or rules, regulations and orders of the Commission.
5. Imposition of monetary civil penalties.
6. Prohibition from engaging in any future operations on the reservation.
7. An order requiring employment, promotion and training of Indians injured by the violation.
8. An order requiring changes in procedures and policies necessary to eliminate the violation.
9. An order making any other provision deemed by the Commission necessary to eliminate violations.
10. The maximum civil penalty, which may be imposed, is \$500.00 for each violation. Each day during which a violation exists shall constitute a separate violation.
11. The Commission or Director may apply to the Tribal Court of the Turtle Mountain Band of Chippewa Indians for a judicial order or decree after notice and hearing to the other party or parties to enforce any final ruling or order of the Commission. The Tribal Court shall act on such requests on an expedited basis. The Tribal Court shall not have jurisdiction to re-examine the merits of any such Commission determination, but may grant, deny, or modify the relief sought as applicable law and equitable circumstances warrant.

CHAPTER 32.09
Appeals

32.0901 **Appeals.**

Any party to a Commission hearing shall have the right to appeal any decision, ruling or order of the Commission to the Tribal Court of Appeals of the Turtle Mountain Chippewa Tribe of the Turtle Mountain Indian Reservation, North Dakota. The Court of Appeals (with a law trained judge presiding)

shall have jurisdiction to reverse, affirm or modify any Commission decision, order or ruling if such Court determines on the basis of the record made at the Commission hearing that the Commission action was (a) not supported by substantial evidence: or, (b) was clearly erroneous as a matter of law. Otherwise, the Commission decisions shall be affirmed.

CHAPTER 32.10
Tribal Training Program

32.1001 **Tribal training program.**

The Tribe shall appropriate such tribal funds necessary and available to establish training programs to prepare the tribal members for job opportunities developed pursuant to the Turtle Mountain Chippewa Tribal Employment Rights Ordinance. The Commission shall negotiate a training program in cooperation with employers, state, federal and tribal officials. Such programs shall follow applicable federal standards (if any).

CHAPTER 32.11
Publication of Ordinance

32.1101 **Publication of ordinance.**

The Commission or Director shall notify all employers of this Ordinance and their obligations to comply. All bid announcements issued by any tribal, federal, state or private or public entities shall contain a statement that the successful bidder will be obligated to comply with this Ordinance and all rules, regulations and orders of the Commission.

The Tribal Council may issue business licenses to prospective employers planning to work on the reservation upon review and approval of the prospective employers business license application in conformity with applicable tribal law and procedure. The TERO office shall make available to the Council the name of each business to whom a tribal business license has been issued. The Commission shall advise such employer or prospective employers of their obligations under this Ordinance, rules, regulations and order of the Commission.

The Director shall send a copy of this Ordinance to every employer operating on the reservation and any amendments or revisions thereto. A small fee may be charged for this service.

CHAPTER 32.12
Compliance Plan

32.1201 **Compliance plan.**

As of the effective date of this Ordinance, no new employer may commence work on the reservation until it has been issued a license from the Tribe and consulted with the Commission or Director and developed a plan occupied by the Commission for meeting its obligations under this Ordinance.

CHAPTER 32.13
Reporting and On-Site Inspection

32.1301 **Reporting and on-site inspection.**

Employers shall submit reports and other information requested by the Director or Commission. The Director or his designee shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Ordinance and rules, regulations and orders of the Commission. The Director or his Designee shall have the right to inspect and copy all relevant records of any employer, of any signatory union or subcontractor of any employer and shall have a right to speak to workers and conduct an investigation on the job site. All information collected by the Director or his Designee shall be kept confidential unless disclosure is

required during a hearing or appeal as provided in Chapter 32.07, 32.08 and 32.09.

**CHAPTER 32.14
Tribal Minimum Wage Scale**

Apprentice Bricklayer	17.00
Apprentice Electrician	16.00
Apprentice Plumber	16.00
Apprentice Sheet Metal	17.00
Asbestos Removal	16.00
Bricklayer	22.00
Carpet & Floor Tile Layer	16.00
Carpenter	18.00
Cement Finisher	19.00
Cleaning/Janitorial	12.50
Construction Foreman	20.00
Construction Worker/Labor	14.00
Drywall Hanger	17.00
Diesel Mechanic	20.00
Finish Carpenter	20.00
Flag Person	13.00
Foreman	19.00
Form Setter	18.00
Glazier	19.00
Heavy Equipment Operator (Heavy)	21.00
Heavy Equipment Operator (Light)	16.00
Heating/Air Conditioning	22.00
Inspector	22.00
Insulator	16.00
Journeyman Electrician	19.00
Journeyman Plumber	18.00
Journeyman Sheet Metal	19.00
Master Electrician	22.00
Master Plumber	22.00
Painter-brush-roller	16.00
Perfa-Taper	17.00
Pilot Car Driver	14.00
Pipe Fitter/Steam Sprinkler	18.00
Pipe Layer-Underground	16.00
Project Manager	25.00
Roofer-Asphalt/Shingles	16.00
Secretary	12.00
Security Guard	14.00
Spray Painter	18.00
Steel or Rod Buster	16.00
Structural Ironworker	22.00
Surveyor (Certified)	19.00
Surveyor Helper/Rodman	15.00
Tractor-Trailer Truck Driver (Diesel)	19.00
Truck Driver-Light	16.00
Welder-Light/Cutting Torch	16.00
Welder-Pipe/Heavy Iron	17.00

This is the most current Tribal minimum wage rates as of July 30, 2013. The tribal wage scale is subject to revision on an annual or other periodic basis by the Tribe. Employers may secure the most current rates from the TERO Director.

**CHAPTER 32.15
Severeability**

32.1501

Severability.

If any provision of this Ordinance, or its application to any person or circumstances is held invalid, the remainder of the Ordinance, or the application of the provision to other persons or circumstances is not affected.

CHAPTER 32.16

Relation to Federal Indian Preference Requirements

32.1601

Relation to Federal Indian Preference Requirements.

The Tribal Indian preference requirements imposed by this Ordinance is separate from the supplemental to any and all applicable federal Indian preference requirements.

CHAPTER 32.17

Special TERO Rules for Large Tribal Construction Projects

32.1701

Special TERO rules for large Tribal construction projects.

For construction projects in amounts over \$500,000, where the Tribe, the Turtle Mountain Housing Authority or any other tribal agency or instrumentality solicits bids for selection of one or more prime contractors, the following special TERO rules shall apply:

1. For all such projects which the entity soliciting bids for one or more prime construction contractors has appointed a project team to oversee the project the TERO Director shall serve as a non-voting member of the project team during the pre-bid and construction phases of the project.
2. For all such projects, the minimum numerical goals and timetables for Indian employment under Section 32.0403 for the prime contractor(s) and all subcontractors and the approved plan for how the contractor or subcontractors are to meet these goals under this ordinance shall not be finalized by the TERO Director or Commission or become legally effective until approved by the project team for that project, and no TERO enforcement proceedings (including the conduct of hearings under Section 32.0705 and the imposition of penalties under Chapter 32.08 or application for tribal court action there under) shall be initiated by the TERO Director or Commission as to said projects until cleared by the project team.
3. All written requests for pre-bid interpretations of TERO requirements received by the TERO office on such projects shall be answered in writing by the TERO office or the Tribe's legal counsel for the project after clearance of said answers by the tribal project manager for the project.
4. All day-to-day TERO office functions including, but not limited to, compliance review, hiring hall, labor survey, employee referral, hiring plan negotiations and other TERO efforts to secure TERO compliance through informal means, shall continue to apply to such projects as otherwise set out in this ordinance.

CHAPTER 32.18

Effective Date

32.1801

Effective date.

This Ordinance is a revision of Tribal Ordinance No. 32 approved July, 28, 1981. Provisions in this Ordinance regarding Indian Preference are continuous. This Ordinance as hereby amended supersedes any all prior resolutions and ordinances of the Turtle Mountain Band of Chippewa Indians to the extent of any conflict or inconsistency.