

# CONTRACT DOCUMENTS

For

Roadway Improvements at  
Riverchase Drive and US Hwy 80 East/West Exit Ramps  
For  
Phenix City, AL

**OWNER:**

City of Phenix City  
1206 7<sup>th</sup> Avenue  
PO Drawer 279  
Phenix City, AL 36868-4848



**FUNDED BY:**

City of Phenix City

**DESIGN ENGINEERS:**

Sain Associates, Inc.  
Two Perimeter Park South, Suite 500 East  
Birmingham, Alabama 35243  
(205) 940-6420  
(SA #12-0258)



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October 10, 2016



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Matt Stoops, P.E.

# CONTRACT DOCUMENTS

## Riverchase Drive Turn Lane Improvements Phenix City, AL

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## 1.0 ADVERTISEMENT FOR BIDS

Sealed bids for the Construction of Riverchase Drive Turn Lane Improvements shall be received by the Purchasing Agent at the City of Phenix City, 601 12<sup>th</sup> Str, Phenix City, AL 36867, at the Office of Finance, until 10 am EST on Tuesday November 16, 2016, and then publicly opened and read aloud in the Phenix City Council Chambers. No bids shall be accepted after this time.

The project will consist of earthwork, drainage, pavement widening, curb & gutter, guardrail, overlay & striping. Plans and specifications can be viewed at the city engineer's office. The bid package may be obtained by emailing your request to Matt Stoops, P.E. at [mstoops@sain.com](mailto:mstoops@sain.com).

All bidders must be licensed by the State of Alabama Licensing Board of General Contractors, as required by Chapter 8 of Title 34 of the Code of Alabama 1975, as amended.

All bids must be submitted on bid forms furnished and must be in a sealed envelope. A bid bond is required. The City of Phenix City reserves the right to reject any or all bids or to waive any informality in the bidding process. No bid may be withdrawn after the time opening has passed. The City of Phenix City reserves the right to hold the bids for a period of 60 days after of receiving bids until notice of award.

A Pre-Bid Conference is not required for this project.

## 2.0 PROJECT DESCRIPTION

Sealed bids for the Construction of Riverchase Drive Turn Lane Improvements shall be received by the Purchasing Agent at the City of Phenix City, 601 12<sup>th</sup> Str, Phenix City, AL 36867, at the Office of Finance, until 10 am EST on Wednesday November 16, 2016, for the furnishing of all labor, material, and equipment for performing the project according to the plans, details, specifications and Contract Documents.

### 1. The Project:

- A. The Project shall be known as  Riverchase Drive Turn Lane Improvements and the general character of said public works project shall consist of the following:  Earthwork, grading, drainage, base and pave, curb & gutter, concrete median barrier, and incidental items along Riverchase Drive and the ramps to/from US Hwy 80 East/West.
- B. The approximate quantities of said project are as follows:  
See the list of pay items and quantities in Section 4.
- C. Special instructions are as follows:  
See the attached General Conditions (Section 12) and Special Conditions (Section 13).

### 2. Plans and Specifications:

- A. For the roadway project, any reference to Specifications shall mean the Alabama Department of Transportation Standard Specifications for Highway Construction 2012 Ed.
- B. Roadway plans refer to the set prepared by Sain Associates, Inc. titled Riverchase Drive Turn Lane Improvements and includes sheets 1 – 47 as outlined below:

1-1C	Title, Index, Legend, and Geometric Layout
2-2C	Typical Sections
2D	Project Notes & Traffic Control Notes
3-3A	Quantities
4-6	Plan & Profile Sheets
7	Detail Sheet
8-9	Paving Layout/Striping/Signing Sheet
10-12	Omitted
13-15	Utility Sheets
16	Sequence of Construction
17	Traffic Control Plan Notes



18-21	Traffic Control Plan
22-22C	Traffic Control Plan Details Sheets
23-25	Omit
26-28	Erosion Control Plan
29-47	Cross Section Sheets

**3. Qualification of Bidders:**

- A. All bidders must be responsible, meeting the criteria and requirements set forth in the Instructions to Bidders and bid proposal.
- B. Prequalification of Bidders IS \_\_\_\_\_; IS NOT  X  required.  
If prequalification of bidders is indicated to be required by the following sentence, then written prequalification information is available for review at the same office where plans, specifications and Contract Documents are available.
- C. The attention of all bidders is called to the provisions of State law governing “General Contractors,” as set forth in ALA. CODE 34-8-1, et. Seq. (1975), and rules and regulations promulgated pursuant thereto.
- D. If a construction manager is being utilized and this contract is one of a multiple of trade contracts, then the bidder shall be fully licensed for the trade, as determined by applicable law.
- E. The City may not enter into a contract with a non-resident corporation or entity which is not qualified under State law to do business in the State of Alabama.
- F. All bidders shall possess all other licenses and/or permits required by applicable law, rule or regulation for the performance of the work.
- G. All bidders must submit with their proposal, Contractor’s license number and a copy of the license. State law, ALA. CODE 34-8-8(b), requires all bids to be rejected which do not contain the General Contractor’s current license number. All subcontractors must also be licensed.

**4. Bid Bonds:** Each bidder must submit with its bid a cashier’s check drawn on an Alabama bank or a fully executed bid bond on the form that is contained in the Contract Documents executed by a surety company duly authorized and qualified to make bond in the State of Alabama. All bonds, sureties and/or cashier checks will be made payable to The City of Phenix City for an amount equal to 5 percent of the total bid in the proposal, but in no event more than \$10,000.00.

The bid security is to become the property of the owner in the event that: (1) the bidder fails to meet any of the qualifications required in the bid specifications stated herein; (2) the bidder misrepresents or falsifies any information required to be provided by the owner; (3) for any reason that the bidder fails to qualify, causing his bid to be withdrawn or rejected, any such withdrawal or rejection results in delay or substantial additional expense to the owner; (4) the contract and bond are not executed within the time set forth, as liquidated damages for the delay, and additional expense of the owner caused thereby.

**6. Sales and Use Tax Savings:** The City HAS  X  HAS NOT \_\_\_\_\_ elected to utilize a sales and use tax savings agreement on this project. If the City has, see attached Special Conditions.

**7. Pre-Bid Conference:** A Pre-Bid Conference IS \_\_\_\_\_ IS NOT  X  required for this project. The Pre-Bid Conference will be held on  n/a date & time  at the  n/a location .

**NOTE:** All bidders are advised to carefully read the Instruction to Bidders contained in the Contract Documents, which provisions and requirements are adopted herein by reference.

[ END OF PROJECT DESCRIPTION ]

### 3.0 INSTRUCTION TO BIDDERS

1. **Intention:** The Advertisement for Bids, Instruction to Bidders, Contract Agreement, any General Conditions, and Special Conditions to the Contract Agreement, Bid Proposal, and the Plans and Specifications are interrelated and apply to the complete work to which they address.

2. **Definitions:** Where the following words, or the pronouns used in their stead, occur herein, they shall have the following meaning:

“Architect” shall mean an Engineer or Architect responsible for design and related services on the project.

“Awarding Authority” shall mean the City of Phenix City.

“Bidder” shall mean a specific contractor that submits a bid proposal on the Plans and Specifications.

“City” or “Owner” shall mean the City of Phenix City, as the awarding authority or its authorized and legal representatives.

“Construction Manager” shall mean that person or entity employed by the City to provide Construction Manager Services on the work or project, who shall be the City’s representative on the project.

“Contract Documents” shall mean the plans, specifications, and bid package documents.

“Contractor” shall mean initially the bidder and then the party of the first part to the construction agreement or the legally authorized representatives of such party, including a trade contractor.

“Days” shall mean calendar days.

“Engineer” shall mean an Engineer or Architect responsible for design and related services on the project.

“Force Account Work” work paid for by reimbursing for the actual cost of labor, materials and equipment usage incurred in the performance of the work, as directed, including a percentage for overhead and profit where appropriate.

“Gender”: a word importing one gender shall if appropriate extend to and be applied to the other gender. The masculine shall include the feminine and vice versa, unless the context clearly indicates otherwise.

“Inspector” shall mean a representative of the Engineer/Architect, Construction Manager or the City, as the case may be.

“Non-Resident Contractor” shall mean a contractor which is neither (a) organized and existing under the laws of the State of Alabama nor (b) maintains its principal place of business in the State of Alabama. A non-resident contractor which has maintained a permanent branch office within the State of Alabama for at least five (5) continuous years shall not thereafter be deemed to be a non-resident contractor so long as the contractor continues to maintain a branch office within Alabama.

“Project” shall mean the Public Work to which these Contract Documents relate, including the labor, materials and all work to be done by Contractor that is the subject of the bid, plans, specifications and Contract Documents.

“Public Property” Real property which the awarding authority owns or has contractual right to own or purchase, including easements, rights-of-way, or otherwise.

“Public Work(s)” shall mean a Project consisting of the construction, repair, renovation, or maintenance of public buildings, structures, sewers, water works, roads, bridges, docks, underpasses and viaducts, as well as any other improvement to be constructed, repaired or renovated or maintained on public property to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.

“Responsible Bidder” shall mean a bidder who, among other qualities determined necessary for performance, is competent, experienced and financially able to perform the contract.

“Responsive Bidder” shall mean a bidder who submits a bid that complies with the terms and conditions of the invitation for bids, including plans, drawings, specifications and other provisions of the Contract Documents.

“Retainage” shall mean that money belonging to the Contractor which has been retained by the awarding authority conditioned upon final completion and acceptance of all work in connection with the Project.

“Singular/Plural”: the singular shall include the plural and vice versa, unless the context clearly indicates otherwise.

“Trade Contracts”: “Trade contracts” or “multiple prime contracts” are multiple but separate contracts with the City on the same project that represent significant construction activities performed concurrently with and closely coordinated with construction activities performed on the project under other trade contracts.

3. **Work to be Performed:** The City contemplates the construction of a public works project as generally described in the Advertisement for Bid and as may be more particularly described, shown or depicted on the plans, specifications, drawings and Contract Documents.

**4. Bidding, Generally:**

- A. All bids must be made upon the bid proposal forms contained in the Contract Documents, shall state the amount bid for each item as shown therein and all blanks shall be properly filled in and bid proposal executed as required.
- B. Any bidder may withdraw his or its bid, either personally or by written request, at any time prior to the scheduled opening time for receipt of bids. Except as provided in ALA. CODE 39-2-11(b)(c)(d), no bid may be withdrawn after opening of bids prior to the time of returning bid bonds as provided for herein.
- C. Any unauthorized conditions, limitations or provision attached to the bid proposal, except as otherwise provided herein, will render a bid proposal informal and may cause its rejection. Unbalanced bids will be subject to rejection. Bids without the General Contractor's license number and a copy of the license will be rejected.
- D. The City reserves the right to reject any or all bids or to waive any informality in the bidding process.

**5. Responsible, responsive bidders:** The City reserves the right to reject any bid that is submitted by a bidder that is determined by the City to not be a responsible bidder or whose bid proposal is not responsive.

In determining whether a bidder or bid is responsible and/or responsive, the City reserves the right to also request and consider the following factors:

- A. Types or kinds of materials or items best suited to the City's needs for the project.
- B. A current financial statement of the bidder.
- C. An accurate inventory of equipment to be used on the project and for a list of key personnel to be used on the project and detailed histories of their experience.
- D. A list of similar work performed by any person, firm, or corporation with the same name as the name or any of the names in the bidder's proposal within the last five (5) years.
- E. A list of five (5) references familiar with the bidder's competence, experience, capabilities, skill and integrity.
- F. A statement of bidder pertaining to bankruptcies, judgments, liens or litigation within the last five (5) years. Such statement shall also apply to each company, officer and the key personnel on the project.
- G. The General Contractor's State license number and class.
- H. Bidder's performance and prosecution of past projects for the City.
- I. Other information supplied in the bid proposal.

The City may make such investigations necessary to determine the ability of the Bidder to perform the work, and Bidder shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Bidder fails to satisfy the City that such Bidder

is properly qualified to carry out the obligations of the Contract and complete the work contemplated therein.

**6. Bid Bonds:** Each bidder must submit with its bid, a cashier's check drawn on an Alabama bank, made payable to the City of Phenix City or a fully executed bid bond on the form that is contained in the Contract Documents, executed by a surety company duly authorized and qualified to make bond in the State of Alabama. All bonds and/or cashiers check will be made payable to the City of Phenix City for an amount equal to (5) percent of the total bid in the proposal, but in no event more than \$10,000.00. The purpose of said bid bond is to insure that the successful bidder will enter into a written contract with the City for the project on the form included in the Contract Documents and furnish a Performance Bond and Labor and Material Bond executed by a surety company duly authorized and qualified to make such bond in the State of Alabama, in the amount required and provide evidence of insurance as required by the bid documents within time specified or if no time is specified, within fifteen (15) days after the forms have been presented to the successful bidder for signature. Provided; however, if extenuating circumstances prevail, the City may grant an extension of time not exceeding five (5) days for the return of the contract bonds and evidence of insurance.

**7. Return of Bid Bonds:** In the event it is necessary to defer a contract award for longer than sixty (60) days, after opening of bids, then all bid bonds, except those of the potential successful bidders will be returned. Award of the contract will be made within the time specified after the opening of bids. In the event no award is made within such time, all bids may be rejected and all bonds returned.

Provided; however, the potentially successful bidder may enter into a written agreement with the City for an extension of time for consideration of its bid, in which case, the bidder's bond shall remain in full force and effect of the City may permit said bidder to substitute a satisfactory surety for the cashier's check if submitted as a guaranty to the bid bond.

**8. Forfeiture of Bid Bonds:** The bid security is to become the property of the owner in the event that: (1) the bidder fails to meet any of the qualifications required in the bid specifications stated herein; (2) the bidder misrepresents or falsifies any information required to be provided by the owner; (3) for any reason that the bidder fails to qualify, causing his bid to be withdrawn or rejected, any such withdrawal or rejection results in delay or substantial additional expense to the owner; (4) the contract and bond are not executed within the time set forth, as liquidated damages for the delay, and additional expense of the owner caused thereby.

Should the successful bidder or bidders to whom a contract is awarded fail to execute a contract(s) and furnish acceptable contract securities and evidence of insurance, as required, within fifteen (15) days after the prescribed forms have been presented to him/her, the City shall retain from the proposal guaranty, if it is a cashier's check or recovered from the principal or the sureties, if the guaranty is a bid bond, the difference between the amount of the contract as awarded, and the amount of the proposals of the new lowest bidder. If no other bids are received, the full amount of the proposal guaranty shall be so retained and recovered as liquidated damages for such default. Any sum so retained or recovered shall be the property of the awarding authority.

## 9. Consideration of Bid Proposals:

- A. Generally: The contract will be awarded to the lowest responsible and responsive bidder, unless the City determines that all the bids are unreasonable or that it is not in the best interest of the City to accept any of the bids.  
Award of the contract will be made on the basis of the lowest actual bid amount for the contract, which is defined as the total of the bid and/or extended total amounts for unit price items, plus requested and accepted additive or deductive alternates, pursuant to the provisions hereof.
- B. Minor irregularities as determined by the City or its representatives, will not cause a bid to be non-responsive and may be waived by the City.
- C. Bidder must possess all licenses and permits required by applicable law, rule or regulation for the performance of the work prior to bidding.
- D. Where the City elects to prequalify contractors prior to bidding, it shall be understood that such prequalification may be general in nature and shall not limit the City's right to revoke such prequalification pursuant to ALA. CODE 39-2-4(d) (1975).
- E. Joint ventures shall not generally be considered acceptable bids without special waiver from the City, which must be requested in writing at least thirty (30) days prior to bid opening.
- F. Additive and/or Deductive Alternates: If the City has elected to request bids for additive and/or deductive alternates, then the following procedure shall be the basis for calculating such bids:
- 1) Deductive Alternates: Any deductive alternate from the base bid shall constitute cumulative deductions from the base bid; and in determining the lowest bidder, if the City elects to consider any deductive alternates, the City will proceed to consider the bids upon the basis of the base bids of all qualified bidders minus the respective deduction stated for the first alternate. If the City determines that it wishes to proceed to consider additional deductive alternates, it may do so sequentially and in like manner throughout the deductive alternates the City elects, so that the base bids of all qualified bidders shall be calculated minus the respective number of deductive alternates in sequence the City has elected to consider. The lowest responsible responsive bid will be the lowest actual base bid of a qualified bidder less the selected sequential deductive alternates.
  - 2) Additive Alternates: To determine additive alternates, any additive alternate shall constitute cumulative additions to the base bid; and in determining the lowest bidder if the City elects to consider any additive alternates, the City will proceed to consider the bids upon the basis of the base bid of all bidders plus the respective addition stated for the first alternate. If the City determines that it wishes to proceed to consider additional additive alternates, the City elects, so that the base bids of all qualified bidders shall be calculated plus the respective number of additive alternates in sequence the City has elected to consider. The lowest responsible responsive bid will be the lowest actual base bid of a qualified bidder plus the selected sequential additive alternates.

Once the City has determined the lowest responsible responsive bidder as set forth herein, then it may award the contract on the basis of accepting and/or rejecting any additive and/or deductive alternates of that bid as it determines is in the best interest of the City.

- G. No Bids or Only One Bid: In the event no bid proposals or only one bid proposal is received in response to the City's Advertisement and Notice for Bids at the time stated for the opening of bids, the City may elect at its discretion, any of the following options:
- 1) Advertise for and seek other competitive bids.
  - 2) Direct that the work shall be done under its direction and control.
  - 3) Negotiate for the work through the receipt of informal bids. Provided; however, where only one responsible and responsive bid has been received, any negotiation for the work shall be for a price lower than that bid.

**10. Materials and Work:** All materials, which the engineering plans specify or are required, will be installed as they are shown on the drawings, plan and/or specifications.

- A. Brand names, catalog numbers, weights, etc., are used to indicate levels of quality only and are not intended to restrict the bidding. Final determination as to equal quality will be made by the City.
- B. Items of Work: The bid shall be based upon the items of work shown in the plans. Items of work shown in the plans specifically for traffic control and erosion control are considered the minimum installation requirements for the construction of this project.

**NOTE:** Bidders are advised to carefully review all other elements of the Contract Documents for more details concerning requirements for performing work on the project.

**11. Execution of Contract, Notice to Proceed:** Award of the contract will be made within the time specified after the opening of bids.

The bidder to whom award is made shall enter into a written contract for the project with the City on the forms provided in the Contract Documents, furnish the required performance and labor and material bonds with proper surety and furnish the evidence of insurance as required, all within fifteen (15) days of presentation of the prescribed forms to the bidder. If extenuating circumstances prevail, the City may grant an extension of time not exceeding five (5) days for the return of the contract, required bonds and evidence of insurance.

Within thirty (30) days after presentation by the bidder to the City, the City shall review the bonds, surety and evidence of insurance to ascertain whether they meet the requirements of the Contract Documents, and if such requirements have been met the City shall complete the execution of the contract.

A notice to proceed order will be issued by the City or its representatives within fifteen (15) days after final execution of the contract by the City. The Contractor shall begin work within fifteen (15) days after the effective date stated in the Notice to Proceed.



**12. Labor, Material and Performance Bonds:** Within fifteen (15) days after the prescribed forms have been presented, the successful bidder shall execute a performance bond with good and sufficient surety from a company duly authorized and qualified to make such bond in the State of Alabama, a performance bond made payable to the City of Phenix City, with a penalty equal to 100 percent of the amount of the contract price and in addition thereto, another bond with good and sufficient surety by a surety company duly authorized and qualified to make such bond in the State of Alabama, payable to the City of Phenix City, in an amount equal to 100 percent of the contract price with an obligation that such contractor shall promptly make payments to all persons supplying it or them with labor, materials or supplies for or in prosecution of the project provided for in such contract and for the payment of reasonable attorneys fees incurred by any successful claimants or plaintiffs in civil actions on said bond, pursuant to the provisions of ALA. CODE 39-1-1 (1975).

**13. Surety and Insurer Qualifications:** All certificates of insurance and bonds (furnished in connection with the work to be performed under this contract) shall be countersigned by a licensed agent residing and engaged in doing business in the State of Alabama. The surety and insurer shall be licensed and authorized to do business in the State of Alabama.

**14. Power-of-Attorney:** The attorney-in-fact (resident agent) who executes the performance bond and/or payment bond on behalf of the surety must attach a notarized copy of his or her power-of-attorney as evidence of his authority to bind the surety of the date of execution of the bonds. Certification by a resident agent authorized to do business in Alabama is required.

**15. Insurance:** The successful contractor shall file with the City, at the time of delivery of the signed contract, satisfactory evidence of insurance meeting the requirements as set forth in the contract agreement. Satisfactory evidence of insurance shall include at a minimum, the insurers standard "Certificate of Insurance" (modified pursuant to insurance requirements of the contract agreement) and the affidavit of insurance. If the City deems that additional evidence or clarification, etc., of insurance is appropriate; the bidder shall promptly furnish the same to the City upon request.

**16. Examination of Contract Documents and of the Site of the Project:** Before submitting a bid proposal for the project, each bidder shall carefully examine the Contract Documents, including but not limited to plans, drawings, specifications, contract, etc., visit the site, and satisfy itself as to the nature and location of the Project, and the general and local conditions, including weather, the general character of the site or building, the character and extent of existing work within or adjacent to the site, any other work being performed or proposed thereon at the time of submission of their bids. It shall obtain full knowledge as to transportation, disposal, handling and storage of materials, location of existing utilities, availability of water, electric power, and all other facilities in the area which will have a bearing on the performance of the Project for which they submit their proposals. The submission of a proposal shall be prima facie evidence that the bidder has made such examination and visit and has judged for and satisfied himself as to conditions to be encountered regarding the character, difficulties, quality, and quantities of work to be performed and the material and equipment to be furnished, and as to the contract requirements and contingencies involved. It shall be the

Bidder's obligation to verify for himself and to his complete satisfaction, all information concerning site and surface conditions.

**17. Interpretation of Plans and Specifications:** If any bidder contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of plans, specifications, or other proposed Contract Documents, he may submit to the Engineer a written request for an interpretation thereof at least five (5) days prior to bid opening. Requests received after this time will not be acknowledged. The bidder submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by written addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of such documents. The City, Construction Manager or Engineer/Architect will not be responsible for any other explanations or interpretations of the proposed documents.

**18. General Contractor's Permit or License:** The attention of all bidders is called to the provisions of the State law governing general contractors as set forth in ALA. CODE 34-8-1 et seq. (1975), particularly in regard to the need for and evidence of a State general contractor's license. The provisions of said statute are adopted herein by reference and form a part of the Contract with the selected bidder should this project be awarded.

Bidders are reminded that they will be governed by said statutes insofar as they are applicable. To summarize the above quoted statutes, ALA. CODE 34-8-1, et seq. (1975) provides that no one is entitled to bid and no contract may be awarded to anyone who does not possess a valid general contractor's permit or license, including specialty classifications for the work, as provided by the foregoing sections of the State Code, and rules and regulations promulgated pursuant thereto and that said bid may not be considered without evidence being produced that he is so qualified. The City may not enter into a contract with a nonresident corporation that is not qualified under the State law to do business in Alabama.

Bidder MUST include with proposal contractor's current license number and a copy of the license. State law, ALA. CODE 34-8-8(b) (1975) requires all bids to be rejected which do not contain general contractor's license number.

**19. Applicable Laws:** Each Bidder shall inform himself of, and the Bidder awarded a contract shall comply with, federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, the use of domestic products, U.S. steel and resident labor, non-discrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees and similar subjects. Certain statutory requirements are summarized immediately hereinafter. The attention of all bidders is called to the fact that the work will be subject to compliance with all applicable City building and technical codes and will be subject, in addition to all other inspections, to inspection by a representative of the City of Irondale.

**[END INSTRUCTION TO BIDDERS]**

## 4.0 PROPOSAL AND UNIT PRICE BID

**To:** City of Phenix City – Purchasing Agent  
**Address:** 601 12<sup>th</sup> Street  
Second Floor  
Phenix City, AL 36867  
**Project Title:** Riverchase Drive Turn Lane Improvements

Submission of this Bid constitutes a binding representation by the Bidder that the Bidder will perform the following obligations within the times and in the manner specified: (a) the Bidder will deliver to the Owner acceptable evidence of insurance; and, (b) the Bidder and its surety will appear before the Owner and sign the Agreement, Performance Bond and Labor and Material Payment Bond, as specified in Article 12 of the Instructions to Bidders.

### BIDDER

The name of the Bidder submitting this Proposal is \_\_\_\_\_  
doing business at \_\_\_\_\_  
Street Address City State Zip

which is the address to which all communications concerned with this Proposal and with the Contract shall be sent.

Licensed, Class \_\_\_\_\_, Alabama General Contractor No.: \_\_\_\_\_ (Attach copy)

Alabama General Contractor Specialty \_\_\_\_\_

Alabama General Contractor License Major Categories:

(1) \_\_\_\_\_ (3) \_\_\_\_\_

(2) \_\_\_\_\_ (4) \_\_\_\_\_

Bidder's contact person for additional information on this Proposal:

**Name:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

**ADDENDA**

The Bidder hereby acknowledges that he has received Addenda No's. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (Bidder shall Insert No. of each Addendum received) and agrees that all addenda issued are hereby made part of the Contract Documents, and the Bidder further agrees that his Proposal(s) includes all impacts resulting from said addenda and that the Bidder has attended the pre-bid conference and examined the bidding documents including the above acknowledged addenda.

**UNIT PRICE BASE BID**

The Bidder agrees to accept as full payment of the work proposed under this project, as herein specified and as shown on the Contract Documents, upon the undersigned's own estimate of quantities and costs, the following total base bid of:

\_\_\_\_\_ Dollars and \_\_\_\_\_ cents  
\$ \_\_\_\_\_ (Amount written in words has precedence)

**TIME OF COMPLETION**

The Contract Times are specified in subsection 3.3 of AIA Document A101-2007 ("Agreement"). The Bidder has carefully correlated the provisions in subsection 3.3 of the Agreement with the other terms and conditions of the bidding and Contract Documents and unequivocally accepts the Contract Times for the Work, and any other designated parts of the Work, as specified.

The Bidder unequivocally accepts the liquidated damage provisions specified in subsection 3.3 of the Agreement in the event of failure, neglect or refusal to complete the Work, or any designated part of the Work, within the corresponding Contract Times specified in subsection 3.3 of the Agreement.

**UNIT PRICE BID PACKAGE**

\_\_\_\_\_ (Legal Name of Bidder)  
Hereby proposes to furnish all labor, materials, equipment, services, supervision, tools, scaffolding, hoisting, transportation, storage, fees, bonds, licenses, (all sales tax must be included in the bid price), insurance, layout and all incidental items necessary to provide a complete turnkey package Scope of Work for the bid package in accordance with the Contract Documents and specifically including, but not limited to , the following primary sections for the Riverchase Drive Turn Lane Improvements.

The Bidder's unit price for materials listed is as follows:

**Riverchase Drive Turn Lane Improvements  
Unit Price Schedule for Bid Package**

Contractor agrees that unit prices listed below are to be used as a basis for any changes to the items of work to add or deduct. Unit prices shall be mutually agreed upon by Contractor, Engineer, and Owner prior to execution of the project contract between the Contractor and Owner. Quantities for any changes or revisions during construction shall be agreed upon by the Owner prior to executing the change or revision.

Item #	Description	Unit	Quantity	Unit Price	Cost
201A-002	Clearing & Grubbing	LS	1		
206C-000	Removing Concrete Sidewalk	SY	91		
206C-003	Removing Concrete Flumes	SY	126		
206D-001	Removing Guardrail	LF	495		
206D-003	Removing Curb & Gutter	LF	1626		
206E-001	Removing Inlets	EA	2		
210A-000	Unclassified Excavation	CY	2304		
210D-000	Borrow Excavation	CY	2365		
214A-000	Structure Excavation	CY	18		
214B-001	Foundation Backfill, Commercial	CY	3		
305A-051	Coarse Aggregate, Section 801, For Miscellaneous use	CY	14		
305B-078	Coarse Aggregate, Section 825, Type B, For Miscellaneous use	Ton	1290		
424A-360	Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Max Aggregate Size Mix, ESAL Range C/D	Ton	1249		
424B-650	Superpave Bituminous Concrete Upper Binder Layer, 3/4" Max Aggregate Size Mix, ESAL Range C/D	Ton	330		
424C-281	Superpave Bituminous Concrete Base Layer, 1 1/2" Max Aggregate Size Mix, ESAL Range E	Ton	390		
530A-001	18" Roadway Pipe (Class 3 R.C.)	LF	9		
530A-103	30" Roadway Pipe (Class 3 R.C.) (Extension)	LF	10		
533A-098	18" Storm Sewer Pipe (Class 3 R.C.)	LF	3		
614A-000	Slope Paving	CY	29		
619A-004	30" Roadway Pipe End Treatment, Class 1	EA	1		
620A-000	Minor Structure Concrete	CY	4		
621C-009	Inlets, Type E1	EA	2		
621C-015	Inlets, Type S1 or S3 (1 Wing)	EA	1		
621D-008	Inlet Units, Type E	EA	2		
621D-015	Inlet Units, Type S1 or S3	EA	1		
621F-030	Manhole Height Adjustment	EA	2		
622A-001	Manhole Covers Reset (Storm)	EA	2		
623B-002	Concrete Curb Type A	LF	734		
623C-000	Combination Curb & Gutter, Type C	LF	900		
629A-005	Concrete Median or Safety Barrier, Type 4A (Reinforced)	LF	186		
630A-001	Steel Beam Guardrail, Class A, Type 2	LF	206		

630C-001	Guardrail End Anchor, Ty 8	EA	1		
630C-003	Guardrail End Anchor, Type 13	EA	2		
630C-030	Guardrail End Anchor, Type 9	EA	1		
630C-050	Guardrail End Anchor, Type 20 Series	EA	1		
650A-000	Topsoil	CY	1162		
652A-100	Seeding	ACRE	3		
656A-010	Mulching	ACRE	3		
665D-000	Temporary Erosion Control	LS	1		
674A-000	Construction Safety Fence	LF	2000		
701A-227	Solid White, Class 2, Type A Traffic Stripe (5" Wide)	MILE	1		
701A-230	Solid Yellow, Class 2, Type A Traffic Stripe (5" Wide)	MILE	2		
701B-207	Dotted, Class 2, Type A Traffic Stripe (5" Wide)	LF	1303		
701C-003	Solid Temporary Traffic Control Markings (Paint)	MILE	3		
701F-001	Dotted Temporary Traffic Stripe (Paint)	LF	1358		
703A-002	Traffic Control Markings, Class 2, Ty A	SF	5540		
703B-002	Traffic Control Legends, Class 2, Ty A	SF	337		
703D-002	Temporary Traffic Control Markings (Paint)	SF	388		
703E-002	Temporary Traffic Control Legends (Paint)	SF	337		
705A-031	Pavement Markers, Class A-H, Type 1-A	EA	154		
705A-032	Pavement Markers, Class A-H, Type 1-B	EA	39		
705A-037	Pavement Markers, Class A-H, Type 2-D	EA	125		
711A-000	Roadway Sign Relocation	LS	1		
740B-000	Construction Signs	SF	392		
740D-000	Channelizing Drums	EA	125		
740F-002	Barricades, Type III	EA	3		
740I-002	Warning Lights, Type B	EA	3		
742A-001	Portable Changeable Message Sign, Type 2	EA	2		
	Total Bid Amount			\$	-

**NOTES:**

1. The unit prices shown include all labor and material necessary to complete the item in place as depicted in the Drawing and Specifications.
2. Any work called for in the plans for which no item is shown shall be subsidiary to various items.

**BIDDER'S DECLARATION AND UNDERSTANDING**

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the City, and that the Proposal is made without any connection or collusion with any person submitting another Proposal on this Contract.

The Bidder further agrees that he has checked and verified the completeness of the Contract Documents and that he has exercised his own judgment regarding the inspection of subsurface information

utilizing all pertinent data in arriving at his conclusions. The Bidder shall be fully responsible for any damages or liability arising out of his or his subcontractors pre-bid investigations.

The Bidder understands and agrees that if a Contract is awarded, the City shall award all schedules under the applicable Contract, based on the total base bid.

The Bidder further declares that he has carefully examined the Contract Documents for the construction of the project and has checked and verified the completeness of the Contract Documents, that he has personally inspected the site, that he has satisfied himself as to the quantities involved, including materials and equipment, and conditions of work involved. Upon reviewing the plans and Contract Documents, the contractor shall report any missing or incomplete information to the owner within 7 days of his review. Failure to report any missing or incomplete information could result in the contractor losing his opportunity for an extra work claim. Bidder further declares that he is fully aware of the fact that the description of the work, quantities of work and materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the said quantities with the detailed requirements of the Contract Documents. Bidder also declares that this Proposal is made according to the provisions and under the terms of the Contract Documents, which Documents are hereby made a part of this Proposal.

Attachments to the bid form and made a condition of this bid include: the bid bond, contractor's license.

#### **START OF CONSTRUCTION AND CONTRACT COMPLETION TIME**

The Bidder further agrees to begin work within fifteen (15) calendar days after the effective date stated in the Notice to Proceed and to fully complete the work, in all respects, within the time specified in the Contract Documents for completion.

**EXPERIENCE OF BIDDER**

Unless advised by the awarding authority in the Advertisement for Bids that the same is not required, the Bidder submits the following list of at least three (3) clients for whom projects involving construction of similar projects have been performed within the past five (5) years.

1. \_\_\_\_\_  
Name of Client Telephone Number  
\_\_\_\_\_  
Street City  
\_\_\_\_\_  
Facility Size Date  
\_\_\_\_\_  
Name of Engineer/Architect Telephone Number  
\_\_\_\_\_  
Name of Engineering Firm

---

2. \_\_\_\_\_  
Name of Client Telephone Number  
\_\_\_\_\_  
Street City  
\_\_\_\_\_  
Facility Size Date  
\_\_\_\_\_  
Name of Engineer/Architect Telephone Number  
\_\_\_\_\_  
Name of Engineering Firm

---

3. \_\_\_\_\_  
Name of Client Telephone Number  
\_\_\_\_\_  
Street City  
\_\_\_\_\_  
Facility Size Date  
\_\_\_\_\_  
Name of Engineer/Architect Telephone Number  
\_\_\_\_\_  
Name of Engineering Firm



**SUBCONTRACTORS**

Unless advised by the awarding authority in the Advertisement for Bids that the same is not required, the Bidder further certifies that if his bid is accepted, the following subcontracting firms or businesses will be awarded subcontracts for the following portions of work:

Description of Work \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Street City State Zip

---

---

Description of Work \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Street City State Zip

---

---

Description of Work \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Street City State Zip

---

---

Description of Work \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Street City State Zip

**BID BOND**

Attached hereto is a (Bid Bond) or (Check) for the sum of \_\_\_\_\_

\_\_\_\_\_ according to the conditions under "Instructions to Bidders" and provisions therein.

**SURETY**

If the Bidder is awarded a construction contract on this Proposal, the Surety who provides the Performance Bond and Payment Bond will be:

\_\_\_\_\_ whose address is

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Street City State Zip

**If Sole Proprietor or Partnership:**

IN WITNESS hereto the undersigned has set his (its) hand this day of

\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Title

**If Corporation:**

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Name of Corporation

By \_\_\_\_\_

Title \_\_\_\_\_

Attest \_\_\_\_\_

(NOTE) If the Bidder is a corporation, the Proposal shall be signed by an officer of the corporation; if a partnership it shall be signed by a partner. If signed by others, authority for signature shall be attached.

The full names of persons or parties interested in the foregoing bid, as principals, are as follows:

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

**5.0 BID BOND TO THE CITY OF PHENIX CITY**

Know all men by these presents, that we, the undersigned, \_\_\_\_\_,

\_\_\_\_\_, Principal; and \_\_\_\_\_, as Surety,

(NOTE: If cashier’s check drawn on an Alabama Bank utilized in lieu of corporate surety, attach check as required by bid documents) are hereby held and firmly bound unto the City of Phenix City, as oblige, hereinafter called the City, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment of which sum, well and truly to be made, the said Principal and Surety hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

The condition of the above obligation is such that whereas the Principal has submitted to the City a certain Bid (Proposal), attached hereto and made a part hereof, to enter into a contract in writing with the City, for the following project or portion thereof:

**Project:**     Riverchase Drive Turn Lane Improvements    

**Location:**     Phenix City, Alabama    

**Engineer:**     Sain Associates, Inc.    

**NOW, THEREFORE,**

- (a) If said Bid shall be rejected, or in the alternate,
- (b) If said Bid shall be awarded and the Principal shall execute and deliver a contract in the Form of Agreement as included in the Contract Documents for the Project, and shall execute and deliver Performance Bond and Labor and Material Bond in the Forms as attached to the Contract Documents executed by a surety company authorized and qualified to make such bonds in the State of Alabama and in the amounts as required by the Instructions to Bidders and submit the insurance certifications as required by the bid document and fulfill all other qualifications and requirements of the Contract Documents and bid specifications (all properly completed in accordance with said Bid), and shall in all other respects perform the agreement created by the acceptance of said Bid within fifteen (15) days after the prescribed forms have been presented to Bidder for execution;

Then, this obligation shall be void, otherwise, the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all default of the Principal hereunder shall be the amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall in no way be impaired or affected by any extension of the time within which the City may accept such Bid; and said Surety does hereby waive notice of any such extension.

**IN WITNESS WHEREOF**, the above-bonded parties have executed this instrument under their several seals, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**WITNESS:**

\_\_\_\_\_

**PRINCIPAL:**

\_\_\_\_\_ (Sign)

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

**SURETY:**

\_\_\_\_\_ (Sign)

\_\_\_\_\_ (Business Address)

\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

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

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

Attorney in Fact

**NOTE:** Surety must be qualified and duly authorized to make bonds in the state. All Bonds and Sureties are subject to review and approval by the City Attorney. Valid current Power of Attorney for Corporate Surety must be attached.

**NOTE:** Bidder may submit a cashier's check drawn on an Alabama bank to the order of the City of Phenix City equal to 5% of the amount bid (maximum amount - \$10,000.00), in lieu of a Corporate Surety, under the same terms.



# AIA<sup>®</sup> Document A101<sup>™</sup> – 2007

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

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

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

City of Phenix City  
1119 Broad Street  
Phenix City, AL 36867

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

To Be Determined

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

Riverchase Turn Lane Improvements  
Phenix City, AL

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

The term architect shall refer to Sain as the engineer for this project.

Sain Associates  
Two Perimeter Park South  
Suite 500 East  
Birmingham, AL 35243

The Owner and Contractor agree as follows.

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

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## 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
- 10 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 the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

**Work shall begin within 15 days after this agreement is signed by both parties.**

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

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



**§ 3.3** The Contractor shall achieve Substantial Completion of the entire Work not later than ( 120 ) days from the date of commencement, or as follows:  
*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

**Portion of Work**

**Substantial Completion Date**

n/a

, subject to adjustments of this Contract Time as provided in the Contract Documents.  
*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

Liquidated damages for overall project completion shall be \$750 per calendar day.  
 Reference chapter 7.0 "Conditions of the Contract" article 3.

**ARTICLE 4 CONTRACT SUM**

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

**§ 4.2** The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

**§ 4.3** Unit prices, if any:  
*(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
See unit bid prices in chapter 4.		

**§ 4.4** Allowances included in the Contract Sum, if any:  
*(Identify allowance and state exclusions, if any, from the allowance price.)*

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

## 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 **5th** day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the **15th** day of the **next** month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( **45** ) 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, unless objected to by the Architect, 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 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of \_\_\_\_\_ percent ( **0** %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add 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), less retainage of \_\_\_\_\_ percent ( **0** %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.



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

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

§ 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 Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

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

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Engineer will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as 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 Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

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

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction [in Russell County, AL.](#)
- Other: *(Specify)*

**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 A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 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.)*

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

Matt Stoops, P.E.  
Sain Associates  
mstoops@sain.com  
205-263-2180

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

To Be Determined

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

§ 8.6 Other provisions:

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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[See list of documents on bid documents table of contents.](#)



§ 9.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
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ALDOT Standard Specifications for Highway Construction, 2012.

§ 9.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

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

See list of drawings in bid documents Chapter 2 "Project Description", Section 2.B.

§ 9.1.6 The Addenda, if any:

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

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

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

**Type of Insurance or Bond**

**Limit of Liability or Bond Amount (\$0.00)**

See requirements in bid documents Chapter 7 "Conditions", Article 10.



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

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

\_\_\_\_\_  
**CONTRACTOR** *(Signature)*

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

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

**CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.**

## 7.0 CONDITIONS OF THE CONTRACT

### CITY OF PHENIX CITY, ALABAMA

#### ATTACHMENT TO THE AIA A101-2007 & A201-2007

#### STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

**Articles 1 and 9.1.7.2:** The following are additional Contract Documents:

1. Advertisement for Bids
2. Project Description
3. Instructions to Bidders
4. Proposal and Unit Price Bid
5. Bid Bond
6. Standard Form of Agreement (AIA Document A101-2007)
7. Conditions of the Contract
8. Non-Collusion Affidavit
9. Performance Bond
10. Labor and Material Bond Form
11. Change Order & Request for Payment Forms
12. General Conditions of the Contract (AIA Document A201-2007)
13. Special Conditions
14. Bid Submittal Checklist

**Article 3.3:**

The periods allowed for completion of the entire Work, or a designated part of the Work, will be as follows:

The entire Work will be (a) substantially complete and ready for acceptance, in accordance with the Contract Documents, in 120 Calendar days.

If separable parts of the Work shall be completed within periods other than the period allowed for Substantial Completion of the entire Work, the Contract Times for those parts of the Work will be as specified in the Contract Documents.

The Owner and Contractor recognize that the Contract Times are of the essence of this Agreement, and that the Owner will suffer injuries and damages if the Work is not completed within those Contract Times, including any extensions authorized by Change Orders. Accordingly, if the Contractor fails, neglects or refuses to complete all or any designated part of the Work, within the corresponding Contract Times, the Contractor shall pay the Owner liquidated damages as provided in the following paragraphs 3.3.1 and 3.3.2. Liquidated damages are cumulative and represent a reasonable estimate of the Owner's extra expenses, which expenses are difficult to estimate with accuracy. Liquidated damages are not intended to compensate the Owner for any other breach of the Contract Documents.

3.3.1. The Contractor agrees to allow the Owner to deduct from progress payments and retention and to pay to the Owner as liquidated damages, and not as a penalty, the amount of Seven Hundred and Fifty and no/100 (\$750.00) Dollars for each day that expires after the Contract Time specified in paragraph 3.3 of this Agreement for Substantial Completion and acceptance of the entire Work until the entire Work is substantially complete; and the amount of Seven Hundred and Fifty and No/100 (\$750.00) Dollars for each day that expires after the Contract Time specified in paragraph 3.3 of this Agreement for final completion of the entire Work until the entire Work is ready for final payment.

3.3.2. The Contractor further agrees to allow the Owner to deduct from progress payments and retention and to pay to the Owner as liquidated damages, and not as a penalty, the amounts designated in subparagraph 3.3.1. of this Agreement for each day that expires after each of the Contract Times specified for Substantial Completion or Partial Completion or final completion until each such part of the work is either substantially complete, and ready for acceptance, or partially complete or finally complete.

#### **Article 8.6: Other Provisions**

- 8.6.1. The Contract Documents form the contract between the Owner and Contractor, and represent the entire and final integrated agreement between the parties with respect to the Work. The Contract Documents are incorporated into this Agreement by reference, and supersede all prior oral or written agreements, if any between the parties.
- 8.6.2. If any provision of the Contract Documents is invalid, illegal or unenforceable, all other provisions of the Contract Documents shall nevertheless remain in full force and effect.
- 8.6.3. It is the intent of the Owner and Contractor that all provisions of law required to be inserted or referenced in the Contract Documents are so inserted or referenced. If any provision of law is not so inserted or referenced, or is inserted or referenced improperly, then each such provision shall be considered inserted or referenced in the Contract Documents in proper form at no increase in Contract Price or Contract Time.
- 8.6.4. The Contractor shall not sell, assign, transfer or otherwise convey any of the Contractor's rights and shall not delegate any of the Contractor's duties under this Agreement without the prior and express written consent of the Owner and the Contractor's sureties. In its sole discretion, the Owner may refuse to consent to any proposed assignment or delegation. Any attempted sale, assignment, transfer, conveyance or delegation in violation of this paragraph shall be void and shall relieve the Owner of any further liability under the Contract Documents but shall not relieve the Contractor's sureties of any liability. If the Owner consents in writing to an assignment, unless specifically

stated to the contrary in the consent, that assignment shall not release or discharge the Contractor from any duty or responsibility set forth in the Contract Documents, and shall not release or discharge the Contractor's sureties under the Bonds required by the Contract Documents.

8.6.5. The Owner reserves the right to correct any error in any progress payment that may have been paid.

8.6.6. This Agreement and the Contract Documents shall be governed by and construed in accordance with the laws of the State of Alabama, without giving any effect to any rules governing conflict of laws.

**Article 10:** - The required Bonds and Insurance and the limits:

- Worker's Compensation – Statutory Amount
- Commercial General Liability - \$1,000,000 each occurrence
- Comprehensive Auto and Vehicle Liability - \$1,000,000 each occurrence
- Property Insurance - \$1,000,000 each occurrence
- Umbrella Excess Liability over Primary Insurance - \$2,000,000
- Performance Bond – One Hundred percent (100%) of the Contract Sum
- Payment Bond – One Hundred percent (100%) of the Contract Sum

**Article 11.3: Property Insurance**

11.3.1 The contractor shall purchase and maintain property insurance, including earth movement and flood, covering the Work at the site in the amount of its full replacement cost. The property insurance shall be All Risks Builder's Risk Completed Value Form Insurance or equivalent manuscript policy, and shall include the interests of the Owner, Contractor, Construction Manager, Sub-contractors and Suppliers, Architect and the Owners and Architect's consultants as their interest may appear, all of whom shall be listed as additional insureds. The corresponding deductibles, which shall be borne by the Contractor, shall not exceed \$25,000. The property insurance shall be endorsed to comply with the waiver of subrogation provisions in 11.3.7.

11.3.1.1 The property insurance shall contain and endorsement or specific provision to cover damages, losses and expenses incurred in the repair or replacement of any insured property (including, but not limited to charges of engineers, architects, attorneys and others). The property insurance also shall include by endorsement or special provision the following additional coverage elections: operational testing (if risk is present), off premises storage not on the site or in transit and property in transit. Deductibles on any such coverage shall not exceed \$25,000 in each instance, unless otherwise authorized by the Owner in writing.

11.3.1.2 The expiration date on the property insurance shall remain, at all times, as the date of commencement of the correction period. Any partial use or occupancy in accordance with Section 9.9 by the Owner shall be subject to the property insurer having acknowledged receipt of notice of partial use, in writing, effected the necessary changes

in coverage and consented by endorsement. The property insurance shall not be reduced, cancelled or lapse because of any partial use.

11.3.2 If required in the Special Conditions, the Contractor shall purchase and maintain Boiler and Machinery Insurance and any additional property insurance, which shall include the interests of the Owner, Contractor, Construction Manager, Subcontractors, Architect and the Owner's and Architect's consultants, all of whom shall be listed as additional named insureds.

11.3.3 If requested by the Owner, the Contractor shall deliver to the Owner, when and as required, a copy of each of the property insurance policies obtained, showing the policy conditions, coverages elected, amounts of coverage and deductibles.



**8.0 NON-COLLUSION AFFIDAVIT**

**STATE OF ALABAMA  
COUNTY OF RUSSELL**

**NAME:** Riverchase Drive Turn Lane Improvements

**LOCATION:** Phenix City, Alabama

**AFFIDAVIT**

Before me, the undersigned authority, duly commissioned and qualified within and for the state and county aforesaid, personally came and appeared \_\_\_\_\_(who) representing \_\_\_\_\_(company) who, being by me first duly sworn deposed and said that he has read this affidavit and does hereby agree under oath to comply with all provisions herein as follows:

(1) That affiant and his firm employed no person, corporation, firm, association, or other organization, either directly or indirectly, to secure the public contract for the above-referenced project with the City of Phenix City, Alabama, under which he/it will, if awarded the contract, receive or received payment, other than persons regularly employed by the affiant whose services in connection with the construction, alteration or demolition of the public building or project or in securing the public contract were in the regular course of their duties for affiant; and,

(2) That no part of the contract price to be received or received by affiant or his firm was paid or will be paid to any person, corporation, firm, association, or other organization for soliciting the contract, other than the payment of their normal compensation to persons regularly employed by the affiant whose services in connection with the construction of the public building or project were in the regular course of their duties for affiant.

Offeror or representative to sign  
and type name below signature. \_\_\_\_\_  
(Affiant)

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**NOTARY PUBLIC**  
**My Commission Expires:** \_\_\_\_\_

**Note:** This form is to be removed and used to submit a proposal.

## 9.0 PERFORMANCE BOND FOR CITY OF PHENIX CITY PROJECT

### Riverchase Drive Improvements Project

**BE IT KNOWN**, that on this \_\_\_\_ day of the month of \_\_\_\_\_, in the year \_\_\_\_\_ (201\_), before me, \_\_\_\_\_, a Notary Public, duly commissioned and qualified, in and for the County of Russell, State of Alabama, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared \_\_\_\_\_ ("**Contractor**"), herein represented by \_\_\_\_\_, its \_\_\_\_\_, as Principal, and \_\_\_\_\_ ("**Surety**"), of the State of \_\_\_\_\_, herein represented by \_\_\_\_\_, its \_\_\_\_\_, who severally and mutually guarantee to the City of Phenix City, Alabama ("**Owner**"), as obligee, the faithful performance of the Contract the **Contractor** has entered into with \_\_\_\_\_ the **Owner** for \_\_\_\_\_ ("**Work**"), covered by the Contract Documents to which this Bond is attached by this reference, and do hereby bind the **Contractor** and **Surety**, its successors, legal representatives and assigns, in favor of the **Owner**, in the full and true sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars, payable on demand to the **Owner**.

**NOW, THE CONDITION** of this obligation is that if the **Contractor** (a) faithfully performs and fulfills all the undertakings, terms, conditions, warranties and guarantees, indemnifications and agreements of the Contract Documents within the Contract Time (including any authorized changes, with or without notice to the **Surety**) and during any correction period; (b) also performs and fulfills all the undertakings, terms, conditions, warranties and guarantees, indemnifications and agreements of any and all duly authorized modifications of the Contract Documents, notice of which modifications the **Surety** hereby expressly waives; (c) fully secures and protects the **Owner**, its legal successor and representative, from all liability in the premises, and from all loss or expense of any kind, including all costs of court and attorney's fees made necessary or arising from the failure, refusal or neglect of the **Contractor**, to comply with the obligations assumed by **Contractor**; and (d) delivers all the **Work** to the **Owner** free from all claims, liens and expenses; then this obligation shall become null and void, otherwise, this obligation shall remain in full force and effect.

**A.** Article 14 of the AIA Document A201-2007 of the Contract governing termination of the **Contractor** for convenience or cause and default of the **Surety** shall be binding on the **Surety** and **Contractor**.

**B.** No change in Contract Price or Contract Time, substitution, addition, deletion or revision in the requirements of the Contract Documents shall diminish, enlarge,

release or otherwise modify the **Surety's** obligations, under this Bond. The **Surety** hereby waives notice of any such change in Contract Price or Contract Time, substitution, addition, deletion or revision.

**C.** It is the intention of the **Contractor, Surety** and **Owner** that the **Surety** shall be bound by all terms and conditions of the Contract Documents and this Performance Bond. However, this Bond is executed pursuant to Ala. Code 1975, Title 39 and if any provision(s) of the bond is/are illegal, invalid or unenforceable, all other provisions of the Bond shall nevertheless remain in full force and effect, and the **Owner** shall be protected to the full extent provided by Ala. Code 1975, Title 39.

**IMPORTANT:** The **Surety** shall provide proof satisfactory to the **Owner** (a) that the **Surety** is currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies, and also meets the requirements of Ala. Code 1975, § 39-2-8 and (b) that this Performance Bond is not written in a sum in excess of the amount limitation designated in Ala. Code 1975 § 39-1-1.

Address and Telephone of the **Surety**

\_\_\_\_\_  
Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**CONTRACTOR** (Sign & Print Full Name)

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

Name and Title: \_\_\_\_\_

**SURETY** (Sign & Print Full Name)

Agent: \_\_\_\_\_ Witness \_\_\_\_\_

Attorney-in-Fact: \_\_\_\_\_ (Attach certified copy of Power of Attorney)

**NOTARY PUBLIC**

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

My commission expires \_\_\_\_\_

**10.0 LABOR AND MATERIAL PAYMENT BOND  
FOR CITY OF PHENIX CITY PROJECT**

Riverchase Drive Turn Lane Improvements

**BE IT KNOWN**, that on this \_\_\_\_ day of the month of \_\_\_\_\_, in the year \_\_\_\_\_(201\_), before me, \_\_\_\_\_, a Notary Public, duly commissioned and qualified, in and for the County of Russell, State of Alabama, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared \_\_\_\_\_ (“**Contractor**”), herein represented by \_\_\_\_\_, its \_\_\_\_\_, as Principal, and \_\_\_\_\_ (“**Surety**”), of the State of \_\_\_\_\_, herein represented by \_\_\_\_\_, its \_\_\_\_\_, who severally and mutually guarantee to the City of Phenix City, Alabama (“**Owner**”), as obligee, the faithful performance of the Contract the **Contractor** has entered into with the **Owner** for \_\_\_\_\_, (“**Work**”), covered by the Contract Documents to which this Bond is attached by this reference, and do hereby bind the **Contractor** and **Surety**, its successors, legal representatives and assigns, in favor of the **Owner**, in the full and true sum of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars, payable on demand to the **Owner**.

**NOW, THE CONDITION** of this obligation is that if the **Contractor** (a) faithfully and promptly pays all Claimants as provided by Law and pays all wages of laborers, workmen, or mechanics, to be employed by any Subcontractor, or by or to Subcontractors, and used in the construction, erection, alteration, installation, or repairs called for by the Contract; (b) promptly pays for all materials or supplies furnished to the **Contractor** or by or to any Subcontractor, for use in machines used by the **Contractor**, or any subcontractor, in the construction, erection, alteration, installation, or repair of the **Work**; (c) fully secures and protects the **Owner**, its legal successor and representative, from all liability in the premises, and from all loss or expense of any kind, including all costs of court and attorney’s fees made necessary or arising from the failure, refusal or neglect of the **Contractor**, to comply with the obligations assumed by **Contractor**; and (d) delivers all the **Work** to the **Owner** free from all claims, liens and expenses, then this obligation shall remain in full force and effect.

**A.** No change in Contract Price or Contract Time, substitution, addition, deletion or revision in the requirements of the Contract Documents shall diminish, enlarge, release or otherwise modify the **Surety’s** obligations, under this Bond. The **Surety** hereby waives notice of any such change in Contract Price or Contract Time, substitution, addition, deletion or revision.

**B.** It is the intention of the **Contractor, Surety** and **Owner** that the **Surety** shall be bound by all terms and conditions of the Contract Documents and this Labor and Material Payment Bond. However, this Bond is executed pursuant to Ala. Code 1975, Title 39 and if any provision(s) of the bond is/are illegal, invalid or unenforceable, all other provisions of the Bond shall nevertheless remain in full force and effect, and the **Owner** shall be protected to the full extent provided by Ala. Code 1975, Title 39. No action under this Bond may be commenced by any Claimant unless the Claimant asserts a claim and brings action against the **Surety** or **Contractor** or both as provided in Ala. Code 1975 Title 39.

**IMPORTANT:** The **Surety** shall provide proof satisfactory to the **Owner** (a) that the **Surety** is currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies, and also meets the requirements of Ala. Code 1975, § 39-2-8 and (b) that this Performance Bond is not written in a sum in excess of the amount limitation designated in Ala. Code 1975 § 39-1-1.

Address and Telephone of the **Surety** \_\_\_\_\_

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**CONTRACTOR** (Sign & Print Full Name)

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

Name and Title: \_\_\_\_\_

**SURETY** (Sign & Print Full Name)

Agent: \_\_\_\_\_ Witness \_\_\_\_\_

Attorney-in-Fact: \_\_\_\_\_ (Attach certified copy of Power of Attorney)

**NOTARY PUBLIC**

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

My commission expires \_\_\_\_\_

**11.0 CHANGE ORDER FORM**

Change Order #: \_\_\_\_\_

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

NAME OF PROJECT: Riverchase Drive Turn Lane Improvements

OWNER: City of Phenix City

CONTRACTOR: \_\_\_\_\_

The following changes are hereby made to the CONTRACT DOCUMENTS.

Description of Changes: \_\_\_\_\_

Change to Contract Price & Days

	Price	Days
Original Contract:		
Previous CO Adjustments:		
This CO Adjustment:		
New Contract:		

The date for completion of all work will be \_\_\_\_\_ (Date).

Approvals

To be effective this Order must be approved by the Federal agency if it changes the scope or objective of the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS.

Requested by: \_\_\_\_\_

Recommended by: \_\_\_\_\_

\_\_\_\_\_  
Owner's Signature & Date

\_\_\_\_\_  
Contractor's Signature & Date

Federal Agency Approval (where applicable) \_\_\_\_\_



# Monthly Payment Request

**PROJECT** Riverchase Drive Turn Lane Improvements **PROJECT NO.** \_\_\_\_\_  
**CONTRACTOR** To Be Determined **DATE** \_\_\_\_\_

CONTRACT PAYMENT REQUEST NO.                     XX                      
 This payment request is for work beginning date: \_\_\_\_\_  
 and ending date: \_\_\_\_\_

To the best of my knowledge and belief, I certify that all items, units, prices, and quantities listed below on this Payment Request are correct; that all Work has been performed, and materials supplied in full accordance with the conditions of Project Construction Contract; that material suppliers and subcontractors for work from previous payments recieved have been paid, and that none of the "TOTAL AMOUNT DUE THIS CONTRACT PAYMENT REQUEST" has been received.

1. OBLIGATIONS: Contractor - input amounts in yellow fields only; remaining fields are calculated.

a. Original Contract Award \$ Amount	<u>                    </u>	
b. Change Orders Approved to Date \$ Amount	<u>                    </u>	
c. TOTAL CONTRACT OBLIGATION TO DATE.....		\$ -

2. PAYMENTS DUE THIS REQUEST

a. Earned to Date	<u>\$ -</u>	
b. Earned on Change Orders to Date	<u>\$ -</u>	
c. TOTAL EARNED TO DATE.....		\$ -
d. Total Retention to Date. (00%)	<u>\$ -</u>	
e. Net Due on Earned to Date (2c. Minus 2d.)	<u>\$ -</u>	
f. Advance for Allowed Materials on Site (90% of value, Request for Payment for Materials on Hand)	<u>\$ -</u>	
g. Total Payment Due to Date (2e. Plus 2f.)	<u>\$ -</u>	
h. Less Previous Payments (item g. from previous claim)	<u>\$ -</u>	
i. TOTAL AMOUNT DUE THIS CONTRACT PAYMENT REQUEST.....		\$ -
j. Withholds for Cause, Breakdown Attached	<u>\$ -</u>	
k. ADJUSTED TOTAL AMOUNT DUE THIS CONTRACT PAYMENT REQUEST.....		\$ -

Contractor \_\_\_\_\_ Date \_\_\_\_\_

**CONTRACT PAYMENT APPROVALS**

Based on on-site observations and the attached Quantity & Time Estimate, each of the undersigned certifies that the Work has progressed as indicated and conforms to the Contract Documents, that the Contractor is entitled to the payment as listed in Item 2-k above.

Inspector _____	Date _____	Engineer _____	Date _____
Approved _____	Construction Administrator _____		Date _____



## Time Charges & Estimated Quantities

PROJECT Riverchase Drive Turn Lane Improvements  
 CONTRACTOR To Be Determined

PROJECT NO. 0  
 Date 0

Contract Payment Request No. 0  
 This payment request is for work beginning date: January 0, 1900  
 And Ending Date January 0, 1900  
 Calendar Days this Period 0

**Time Charges**

1. Time Charges: Contractor - input amounts in yellow fields only; remaining fields are calculated.
- a. Original Contract Days 90
  - b. Change Orders Approved Days 0
  - c. TOTAL CONTRACT OBLIGATION TO DATE..... 90
2. Days Used
- a. Previous Days Used 0
  - b. Days Used this Period 0
  - c. TOTAL DAYS USED..... 0
  - d. Dates Charged:
  - e. Dates not Charged with Reason:
  - f. Percent Complete by Time 0%

**Paid Quantities**

Item #	Description	Estimated Qty	Unit Price	Planned Cost	Quantities Complete	Paid Amount
201A-002	Clearing & Grubbing	1		\$ -	0	\$ -
206C-000	Removing Concrete Sidewalk	91		\$ -	0	\$ -
206C-003	Removing Concrete Flumes	126		\$ -	0	\$ -
206D-001	Removing Guardrail	495		\$ -	0	\$ -
206D-003	Removing Curb & Gutter	1626		\$ -	0	\$ -
206E-001	Removing Inlets	2		\$ -	0	\$ -
210A-000	Unclassified Excavation	2304		\$ -	0	\$ -
210D-000	Borrow Excavation	2365		\$ -	0	\$ -
214A-000	Structure Excavation	18		\$ -	0	\$ -
214B-001	Foundation Backfill, Commercial	3		\$ -	0	\$ -
305A-051	Coarse Aggregate, Section 801, For Miscellaneous use	14		\$ -	0	\$ -
305B-078	Coarse Aggregate, Section 825, Type B, For Miscellaneous use	1290		\$ -	0	\$ -
424A-360	Wearing Surface Layer, ½" Max Aggregate Size Mix, ESAL Range C/D	1249		\$ -	0	\$ -
424B-650	Upper Binder Layer, ¾" Max Aggregate Size Mix, ESAL Range C/D	330		\$ -	0	\$ -
424C-281	Base Layer, 1 ½" Max Aggregate Size Mix, ESAL Range E	390		\$ -	0	\$ -
530A-001	18" Roadway Pipe (Class 3 R.C.)	9		\$ -	0	\$ -
530A-103	30" Roadway Pipe (Class 3 R.C.) (Extension)	10		\$ -	0	\$ -
533A-098	18" Storm Sewer Pipe (Class 3 R.C.)	3		\$ -	0	\$ -
614A-000	Slope Paving	29		\$ -	0	\$ -
619A-004	30" Roadway Pipe End Treatment, Class 1	1		\$ -	0	\$ -
620A-000	Minor Structure Concrete	4		\$ -	0	\$ -
621C-009	Inlets, Type E1	2		\$ -	0	\$ -
621C-015	Inlets, Type S1 or S3 (1 Wing)	1		\$ -	0	\$ -
621D-008	Inlet Units, Type E	2		\$ -	0	\$ -
621D-015	Inlet Units, Type S1 or S3	1		\$ -	0	\$ -
621F-030	Manhole Height Adjustment	2		\$ -	0	\$ -
622A-001	Manhole Covers Reset (Storm)	2		\$ -	0	\$ -
623B-002	Concrete Curb Type A	734		\$ -	0	\$ -
623C-000	Combination Curb & Gutter, Type C	900		\$ -	0	\$ -
629A-005	Concrete Median or Safety Barrier, Type 4A (Reinforced)	186		\$ -	0	\$ -
630A-001	Steel Beam Guardrail, Class A, Type 2	206		\$ -	0	\$ -
630C-001	Guardrail End Anchor, Ty 8	1		\$ -	0	\$ -
630C-003	Guardrail End Anchor, Type 13	2		\$ -	0	\$ -
630C-030	Guardrail End Anchor, Type 9	1		\$ -	0	\$ -
630C-050	Guardrail End Anchor, Type 20 Series	1		\$ -	0	\$ -
650A-000	Topsoil	1162		\$ -	0	\$ -
652A-100	Seeding	3		\$ -	0	\$ -
652C-000	Mowing	3		\$ -	0	\$ -
656A-010	Mulching	3		\$ -	0	\$ -



Item #	Description	Estimated Qty	Unit Price	Planned Cost	Quantities Complete	Paid Amount
665D-000	Temporary Erosion Control	1		\$ -	0	\$ -
674A-000	Construction Safety Fence	2000		\$ -	0	\$ -
701A-227	Solid White, Class 2, Type A Traffic Stripe (5" Wide)	1		\$ -	0	\$ -
701A-230	Solid Yellow, Class 2, Type A Traffic Stripe (5" Wide)	2		\$ -	0	\$ -
701B-207	Dotted, Class 2, Type A Traffic Stripe (5" Wide)	1303		\$ -	0	\$ -
701C-003	Solid Temporary Traffic Control Markings (Paint)	3		\$ -	0	\$ -
701F-001	Dotted Temporary Traffic Stripe (Paint)	1358		\$ -		
703A-002	Traffic Control Markings, Class 2, Ty A	5540		\$ -	0	\$ -
703B-002	Traffic Control Legends, Class 2, Ty A	337		\$ -	0	\$ -
703D-002	Temporary Traffic Control Markings (Paint)	388		\$ -	0	\$ -
703E-002	Temporary Traffic Control Legends (Paint)	337		\$ -	0	\$ -
705A-031	Pavement Markers, Class A-H, Type 1-A	154		\$ -	0	\$ -
705A-032	Pavement Markers, Class A-H, Type 1-B	39		\$ -	0	\$ -
705A-037	Pavement Markers, Class A-H, Type 2-D	125		\$ -	0	\$ -
711A-000	Roadway Sign Relocation	1		\$ -	0	\$ -
740B-000	Construction Signs	392		\$ -	0	\$ -
740D-000	Channelizing Drums	125		\$ -	0	\$ -
740F-002	Barricades, Type III	3		\$ -	0	\$ -
740I-002	Warning Lights, Type B	3		\$ -	0	\$ -
742A-001	Portable Changeable Message Sign, Type 2	2		\$ -	0	\$ -
			\$ -	\$ -	0	\$ -
			Total	\$ -	Total	\$ -

Percent Complete by \$ Amount: #DIV/0!



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007 Instructions

## General Conditions of the Contract for Construction

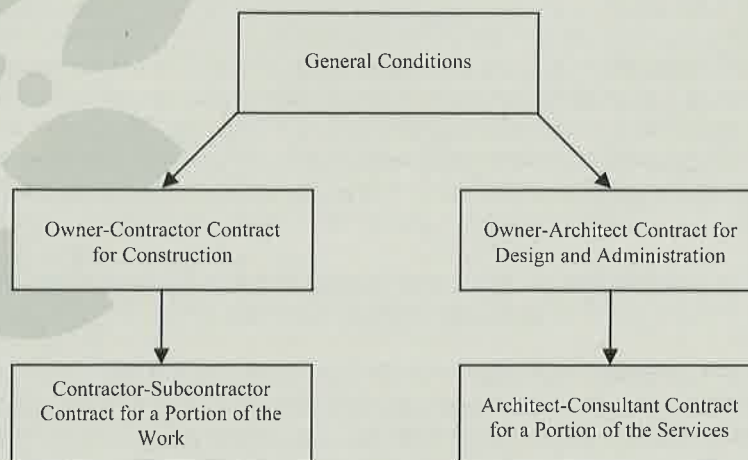
### GENERAL INFORMATION

**Purpose.** AIA Document A201<sup>™</sup>-2007, a general conditions form, is considered the keystone document of the Conventional (A201) family of documents because it provides the terms and conditions under which the Owner, Contractor and Architect will work together during the building construction process. When adopted into an Owner-Contractor agreement, A201-2007 provides an essential component of the construction contract. In addition, A201-2007 is incorporated by reference into the Owner-Architect and Contractor-Subcontractor agreements in the A201 family of documents, thus establishing a common basis for the primary and secondary relationships on the typical medium to large size, or complex (involving fast track scheduling or multiple bid packages) construction project.

For smaller or less complex construction projects, document users should consider using AIA Document A107<sup>™</sup>-2007, Agreement Between Owner and Contractor for Projects of a Limited Scope. For single family residential projects, or even smaller and less complex commercial projects, users may wish to consider AIA Document A105<sup>™</sup>-2007, Agreement Between Owner and Contractor for a Residential or Small Commercial Project.

**Related Documents.** A201-2007 is incorporated by reference into three AIA Owner-Contractor agreements: A101<sup>™</sup>-2007, A102<sup>™</sup>-2007, and A103<sup>™</sup>-2007; into A401<sup>™</sup>-2007, Agreement Between Contractor and Subcontractor; and into two AIA Owner-Architect agreements: B101<sup>™</sup>-2007 and B103<sup>™</sup>-2007. A201-2007 may be adopted by indirect reference into the Architect-Consultant agreement when the prime Agreement between the Owner and Architect adopts A201-2007 and it is in turn adopted into the Architect-Consultant agreement, AIA Document C401<sup>™</sup>-2007. Such incorporation by reference is a valid legal drafting method, and documents so incorporated are generally interpreted as part of the respective contract.

The Contract Documents, including A201-2007, record the Contract for Construction between the Owner and the Contractor. The other Contract Documents are the Owner-Contractor agreement, Supplementary Conditions, Drawings, Specifications, and Modifications. Although the AIA does not produce standard documents for Supplementary Conditions, Drawings or Specifications, a variety of model and guide documents are available, including AIA's MASTERSPEC and AIA Document A503<sup>™</sup>-2007, Guide for Supplementary Conditions. As mentioned above and diagrammed below, A201-2007 is a vital document used to allocate the proper legal responsibilities of the parties.



On construction projects, contractual relationships are created between owners, architects, architects' consultants, contractors, subcontractors, sub-subcontractors, and others down through the multiple tiers of participants. If custom-crafted agreements were written in isolation for each of those contractual relationships, the problems of overlaps and gaps in the numerous participants' responsibilities could lead to mass confusion and chaos. To prevent and solve this problem, the construction industry commonly uses standardized general conditions, such as AIA Document A201-2007, for coordinating those many relationships on the project by its adoption into each contract.

The AIA expends significant time and resources in the development of A201 and its related agreements to provide coordinated linkages in the tiers of legal relationships. AIA documents related to A201 are crafted with common phrasing, uniform definitions and a consistent, logical allocation of responsibilities down through the tiers of relationships. Together these documents are known as the Conventional (A201) family of documents, and are listed below:

- A101™–2007, Agreement Between Owner and Contractor (Stipulated Sum)
- A102™–2007, Agreement Between Owner and Contractor (Cost Plus Fee, with GMP)
- A103™–2007, Agreement Between Owner and Contractor (Cost Plus Fee, without GMP)
- A401™–2007, Agreement Between Contractor and Subcontractor
- A503™–2007, Guide for Supplementary Conditions
- A701™–1997, Instructions to Bidders
- B101™–2007, Agreement Between Owner and Architect
- B103™–2007, Agreement Between Owner and Architect for a Large or Complex Project
- B201™–2007, Architect's Services: Design and Construction Contract Administration
- B209™–2007, Architect's Services: Construction Contract Administration
- B503™–2007, Guide for Amendments to AIA Owner-Architect Agreements, and
- C401™–2007, Agreement Between Architect and Consultant

The A201 family is augmented by a number of standard contract administration documents (G-Series) used generally for processing payments to the Contractor and formalizing changes in the Work.

The AIA publishes two other general conditions documents that parallel A201–2007, one for the Construction Manager as Adviser family of documents, AIA Document A201™CMa–1992, and the other for the Interiors family of documents, AIA Document A251™–2007.

**Dispute Resolution—Mediation and Arbitration.** This document contains provisions for mediation and arbitration of claims and disputes. Mediation is a non-binding process, but is mandatory under the terms of this document. Arbitration is no longer mandatory under the terms of the 2007 Conventional (A201) family of documents but may be selected in the Owner-Contractor agreement. If arbitration is selected as the method of binding dispute resolution, that selection is binding in most states and under the Federal Arbitration Act. In a minority of states, arbitration provisions relating to future disputes are not enforceable but the parties may agree to arbitrate after the dispute arises. Even in those states, under certain circumstances (for example, in a transaction involving interstate commerce), arbitration provisions may be enforceable under the Federal Arbitration Act.

The AIA does not administer dispute resolution processes. To submit disputes to mediation or arbitration or to obtain copies of the applicable mediation or arbitration rules, call the American Arbitration Association at (800) 778-7879, or visit their Web site at [www.adr.org](http://www.adr.org).

**Why Use AIA Contract Documents.** AIA Contract Documents are the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. The documents reflect actual industry practices, not theory. They are state-of-the-art legal documents, regularly revised to keep up with changes in law and the industry—yet they are written, as far as possible, in everyday language. Finally, AIA Contract Documents are flexible: they are intended to be modified to fit individual projects, but in such a way that modifications are easily distinguished from the original, printed language.

**Use of Non-AIA Forms.** If a combination of AIA documents and non-AIA documents is to be used, particular care must be taken to achieve consistency of language and intent among documents.

**Standard Forms.** Most AIA documents published since 1906 have contained in their titles the words “Standard Form.” The term “standard” is not meant to imply that a uniform set of contractual requirements is mandatory for AIA members or others in the construction industry. Rather, the AIA standard documents are intended to be used as fair and balanced baselines from which the parties can negotiate their bargains. As such, the documents have won general acceptance within the construction industry and have been uniformly interpreted by the courts. Within an industry spanning 50 states—each free to adopt different, and perhaps contradictory, laws affecting that industry—AIA documents form the basis for a generally consistent body of construction law.

**Use of Current Documents.** Prior to using any AIA Contract Document, users should consult [www.aia.org](http://www.aia.org) or a local AIA component to verify the most recent edition.



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### **CHANGES FROM THE PREVIOUS EDITION**

AIA Document A201–2007 revises the 1997 edition of A201 to reflect changes in construction industry practices and the law. Comments and assistance in this revision were received from numerous individuals and organizations, including those representing owners, architects, engineers, specifiers, general contractors, subcontractors, independent insurance agents, sureties, attorneys and arbitrators.

A number of substantial changes have been made to A201–2007. The principal changes are described below:

**Article 1.** A definition of Instruments of Services is now added and the ownership and use of drawings, specifications and other instruments of services is further clarified. Additionally, the parties are now required to establish necessary protocols to govern the electronic transmission of data. This article also adds Initial Decision Maker as a defined term (refer to Article 15).

**Article 2.** Following commencement of the Work, the Contractor may only require the Owner to provide reasonable evidence that adequate financial arrangements have been made if certain enumerated conditions (of a type that would cause the Contractor to have concerns about the Owner’s ability to meet its financial obligations) exist.

**Article 3.** Since 1997, many construction projects have suffered delays due the discovery of burial grounds, archaeological sites, and wetlands. New Section 3.7.5 addresses the Owner’s and Contractor’s responsibilities in the event these are not noted on the Contract Documents, but discovered during construction. Section 3.3.1 now clarifies the extent of the Owner’s responsibility for the costs associated with Owner-required means and methods of construction. Also, new requirements for the Contractor to notify the owner of its proposed superintendent are set out in Section 3.9.

**Article 4.** This article is revised to coordinate with changes to the 2007 AIA Owner-Architect agreements that incorporate A201–2007 and is now re-titled “Architect.” The process for making, deciding and resolving Claims is substantially revised and is relocated from Article 4 to a new Article 15.

**Article 7.** Section 7.3.9 is now revised to provide a more efficient process for making payments to the Contractor for changes to the Work completed under Construction Change Directives.

**Article 9.** New Section 9.5.3 allows the Owner to issue joint checks, if the Architect withholds certification for payment as a result of the Contractor’s failure to make payments properly to the Subcontractors or to lower tier subcontractors and suppliers. Section 9.5.3 now grants the Owner authority to request written evidence from the Contractor that the Contractor has properly paid the Subcontractors, etc.

**Article 10.** New Section 10.3.5 now adds a reciprocal indemnity provision whereby the Contractor indemnifies the Owner for costs and expenses related to hazardous materials the Contractor brings to the site and negligently handles, except where such costs and expenses are due to the Owner’s fault or negligence.

**Article 11.** This article deletes the optional Project Management Protective Liability insurance added in 1997 to cover vicarious liability for construction operations. To diminish the costs to the Project team of third-party claims, a new

Section 11.1.4 requires the Contractor to add the Owner, Architect and Architect's consultants as additional insureds on its commercial liability coverage for claims caused by the Contractor's negligence during the Contractor's operations. The Contractor is also required to add the Owner as an additional insured on its commercial liability coverage for claims caused by the Contractor's negligence during the Contractor's completed operations.

**Article 13.** Section 13.5.1 now makes the Owner responsible for the costs of tests when applicable codes, such as the International Building Code, prohibit the Owner from delegating the costs. Section 13.7, establishing the time period in which the Owner and Contractor must bring Claims, is amended to more closely follow state statutes of limitations and repose and to require compliance with state law.

**Article 15.** New Article 15 consists of revised Claims and Disputes language from Article 4 of AIA Document A201™–1997. Article 15 introduces the concept of an Initial Decision Maker (IDM). Unlike the 1997 edition, A201–2007 allows for Claims to be decided initially by someone other than the Architect. The Owner and the Contractor have an opportunity to identify an IDM other than the Architect in the Owner-Contractor agreement. If the Owner and Contractor do not select a third party IDM, however, the Architect will serve as the IDM, thus maintaining its traditional role as the initial decider of Claims. For most Claims, a decision by the IDM remains a condition precedent to proceeding to mediation. As in A201–1997, mediation is a condition precedent to the method of binding dispute resolution selected in the Owner-Contractor agreement. While arbitration is no longer mandatory in the 2007 Conventional (A201) family of documents, Article 15 sets forth the requirements for arbitration if it is the selected method of binding dispute resolution. Unlike in the 1997 edition, however, A201–2007 allows for consolidation of arbitrations and joinder of necessary third parties.

#### **USING A201–2007**

**Modifications.** Particularly with respect to professional or contractor licensing laws, building codes, taxes, monetary and interest charges, arbitration, indemnification, format and font size, AIA Contract Documents may require modification to comply with state or local laws. Users are encouraged to consult an attorney before completing or modifying a document.

In a purchased paper AIA Contract Document, necessary modifications may be accomplished by writing or typing the appropriate terms in the blank spaces provided on the document, or by attaching Supplementary Conditions, special conditions or referenced amendments.

Modifications directly to purchased paper AIA Contract Documents may also be achieved by striking out language. However, care must be taken in making these kinds of deletions. Under NO circumstances should standard language be struck out to render it illegible. For example, users should not apply blocking tape, correction fluid or Xs that would completely obscure text. Such practices may raise suspicion of fraudulent concealment, or suggest that the completed and signed document has been tampered with. Both parties should initial handwritten changes.

Using AIA software, modifications to insert information and revise the standard AIA text may be made as the software permits.

By reviewing properly made modifications to a standard AIA Contract Document, parties familiar with that document can quickly understand the essence of the proposed relationship. Commercial exchanges are greatly simplified and expedited, good faith dealing is encouraged, and otherwise latent clauses are exposed for scrutiny.

AIA Contract Documents may not be retyped or electronically scanned. Retyping can introduce typographic errors and cloud legal interpretation given to a standard clause. Furthermore, retyping and electronic scanning are not permitted under the user's limited license for use of the document, constitute the creation of a derivative work and violate the AIA's copyright.

#### **Cover Page**

**Project.** The Project should be identified with the same name, and location or address as set forth in the Owner-Contractor agreement.

**Owner.** The Owner should be identified using the same legal name and the address as set forth in the Owner-Contractor agreement.

**Architect.** Similarly, the Architect should be identified using the same legal name and the address as set forth in the Owner-Contractor agreement.





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

## General Conditions of the Contract for Construction

for the following PROJECT:

*(Name and location or address)*

Riverchase Drive Turn Lane Improvements

### THE OWNER:

*(Name, legal status and address)*

City of Phenix City  
1119 Broad Street  
Phenix City, AL 36867

### THE ARCHITECT:

*(Name, legal status and address)*

The term architect shall refer to Sain as the engineer for this project.  
Sain Associates  
Two Perimeter Park South  
Suite 500 East  
Birmingham, AL 35243

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

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

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

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents 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~~ <sup>engineer</sup> lawfully licensed to practice ~~architecture~~ <sup>engineering</sup> or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

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

#### § 4.2 Administration of the Contract

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

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

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

#### § 4.2.4 Communications Facilitating Contract Administration

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

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

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

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



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

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

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

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

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

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

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

## 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 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 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 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 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.

**§ 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.~~

## 13.0 SPECIAL CONDITIONS

### 101 GENERAL CONDITIONS

- A. The General Conditions (AIA Document A201-2007) shall apply to all work, where applicable.
- B. Any reference to Supplementary Conditions shall mean Special Conditions.
- C. References to the Architect or Engineer in the General Conditions shall mean Sain Associates Inc.
- D. The ALDOT specifications referenced herein shall be used for construction items only. The General Conditions contained in the Contract Documents shall govern all other aspects of the project.
- E. Where there is a conflict the Special Conditions take precedence over General Conditions. If plans and specifications conflict, the more stringent requirement applies.
- F. Contractor shall have in his possession written approval from land owners to work outside of road right-of-way or acquired temporary construction easements.
- G. City has right to let any other project (i.e. utility work) within the project limits. Contractor shall coordinate work and cooperate with the City and other Contractors.
- H. The City will be responsible for the construction material testing.

### 102 SCOPE OF WORK

- A. All work indicated, detailed, and otherwise shown on the drawings and specifications shall be furnished and installed or be performed by the Contractor.

### 103 PROTECTION

- A. Existing pavement, utilities, and other improvements on the site or within construction limits that are to remain shall be properly protected from damage of any kind by the contractor during the entire construction operation. Improvements that are damaged shall be replaced in kind to the satisfaction of the City, Construction Manager, County, ALDOT or Engineer at Contractor's expense.
- B. Provide all required fences, barricades, lights, walkways, and other protection as may be required by the governing governmental agencies for protection of the public on or near the site.

### 104 EROSION CONTROL

- A. The Contractor shall transfer the ADEM NPDES permit from the City's name to his own name prior to starting work. The contractor will pay the permit transfer fee (\$800) to ADEM. The contractor shall employ its own QCP and QCI for monitoring and performing inspections, which are to be submitted to ALDOT, completing the NOT, and all other conditions of the NPDES permit.
- B. The Contractor will maintain the erosion and sediment control measures on site while work is being performed by other entities, including but not limited to the City or Utility companies.
- C. The Contractor shall provide any additional erosion and sediment control measures whether shown or not to provide control of erosion on-site and sediment deposition off-site at no additional cost to the City.

**105 CONSTRUCTION OF ROADWAY IN RIGHT OF WAY**

It shall be understood that all construction occurring in the rights-of-way is to be constructed in accordance with latest edition of ALDOT Standard Specifications for Highway Construction or other governing authorities and is subject to their inspection, regulations, and acceptance.

All construction of highways or streets is to have appropriate signage and/or barricades in accordance with the latest edition of the Uniform Manual of Traffic Control Devices (MUTCD) and/or State Highway Department and/or County Regulations. During peak hours, traffic is to be inconvenienced to an absolute minimum. Lane closure restrictions are listed in the plans and shall be adhered to. If traffic backups become excessive due to a lane closure, the City's Construction Manager can require the contractor to open the lanes immediately.

**106 EXISTING UTILITIES**

Contractor shall contact all utility owners 48 hours in advance of beginning work. Contractor is to exercise care around and over any existing utility. Contractor shall immediately report any utility interference or conflicts to the City.

Contractor shall contact Alabama One-Call and utility owners and obtain information as to location and condition of existing utilities and service lines. The existing utility locations shown on the plans are for information only. Utility relocations are not part of this contract. If utilities are in conflict with proposed improvements and relocations are deemed necessary, contractor shall notify the City before doing any work associated with the relocation.

All utilities shown are based upon information available. Contractor shall verify location of those shown and determine if others are present before disturbing. Contractor is responsible for any damage to existing utilities whether shown or not shown.

**107 PROVIDED BY CONTRACTOR**



Contractor is to provide all engineering, surveying, and stake-out to properly control work.

Contractor shall prepare red-line drawings of the roadway work that clearly document any approved deviations installed. Any deviation from plans shall be approved by the City and the Construction Engineer prior to implementation.

Contractor shall provide after-hours emergency contact information to the City prior to construction.

**108 PROTECTION OF PUBLIC STREETS, ROADS AND ENVIRONMENT**

The Contractor is responsible for dust control and runoff from grading operations that cause siltation or pollution to streams. Traffic control is the responsibility of the contractor. Necessary signs, flagmen, barricades, and lights to protect the public are to be provided by the Contractor. Any road or street damage that is caused by the Contractor's equipment is the responsibility of the Contractor and shall be repaired at no additional cost to the City.

**109 MISCELLANEOUS**

Any note on plans or drawings shall supersede requirements of specifications if any conflict exists.

Notes on the Drawings: The Contractor is responsible for notes on the drawings which call attention to particular requirements or conditions. The fact that these requirements or conditions are not called out in these specifications does not relieve the Contractor of responsibility for such requirements or conditions.

**110 EXISTING TOPOGRAPHY**

It shall be the obligation of each Bidder to carefully examine the site and satisfy himself as to the general accuracy of the existing conditions and topographic survey. If the Bidder disagrees with topographic survey, he must notify Owner and Engineer in writing in advance of bidding.

**111 PROTECTION OF AREAS BEYOND LIMITS OF WORK**

Areas beyond limits of work shall be protected and remain undisturbed. No trees or underbrush shall be disturbed or scarred. No siltation or erosion beyond limits of work will be permitted. Contractor shall use brush barriers, settling ponds, silt fences, bales of hay, or other methods to prevent sedimentation, siltation, or erosion beyond limits of clearing. All work shall be in accordance with plans, details, and specifications. No stream shall be polluted with oils, asphalts, or greases. Any damage to area beyond limits of work damaged by Contractor shall be repaired to Owner's satisfaction at no cost to Owner.

**112 CITY SALES TAX ADJUSTMENT**

The City does elect to utilize a Use & Sales Tax Savings Agreement. Further details will come from the City.

**114 ADJUSTMENT PAY FACTORS**

ALDOT fuel and asphalt adjustment index shall not apply to this project.

**115 WARRANTIES & GUARANTEES**

Except as may be specifically called for to the contrary, all parts of this construction shall be warranted, by the Contractor, to be free of faulty workmanship and materials for a period of one year after final acceptance of the work by the City of Phenix City. Materials which may, as a standard, be guaranteed for a longer period shall carry that longer warranty.

## 14.0 BID SUBMITTAL CHECKLIST

Section	Submitted
1. Advertisement .....	n/a
2. Project Description	
2.3.G Contractor's license.....	Yes or No
2.4 Bid bond, refer to section 5.....	n/a
2.7 Attended prebid conference.....	n/a
3. Instruction to Bidders	
Refers to sections 4 and 5 .....	n/a
4. Proposal and Unit Price Bid	
Pages 4-1 through 4-11 .....	Yes or No
5. Bid Bond	
Pages 5-1 through 5-2 .....	Yes or No
6. Standard Agreement (AIA Document A101-2007)	
Required at contract signing .....	n/a
7. Conditions	
7.10 Insurance & bonds required at contract signing .....	n/a
8. Non Collusion Affidavit	
Page 8-1 .....	Yes or No
9. Performance Bond	
Required at contract signing .....	n/a
10. Labor & Material Bond	
Required at contract signing .....	n/a
11. Change Order Form	
For information only .....	n/a
12. General Conditions (AIA Document)	
For information only .....	n/a
13. Special Conditions	
For information only .....	n/a