



# AGENDA

## Battlefield Fire Protection District Battlefield Volunteer Fire Department



Special Event

4117 W. Second St., Battlefield, MO 65619

**Saturday, September 21, 2024**

**10:00 AM – 02:00 PM**

### Special Events

District Family BBQ

### Adjournment

Representatives of the news media may obtain copies of this notice by contacting the Battlefield Fire Protection District.

Posted: 9/20/2024 8:00 AM certified by the undersigned that a true copy of the foregoing agenda was posted at the Battlefield Administration and Training Center in Battlefield, Missouri.

A handwritten signature in black ink, appearing to read "John H. Smith", written over a horizontal line.

Fire Chief





# AGENDA

## Battlefield Fire Protection District Battlefield Volunteer Fire Department



Regular Board Meeting  
4117 W. Second St., Battlefield, MO 65619  
**Tuesday, September 10, 2024**  
**5:00 PM**

### Preliminaries to the Meeting

1. Call to Order
2. Ceremonial Matters
3. Roll Call
4. Establishment of a Quorum
5. Approval of the Meeting's Agenda

### Approval of Last Month's Minutes

1. Correction of Minutes
2. Approval of Regular Minutes

### Financial Business

1. Payment of the bills
2. Check signing.
3. Financial statements

### Public Comments

1. Any comments must be submitted via email to [info@battlefieldfire.com](mailto:info@battlefieldfire.com) prior to 5pm on the Monday prior to meeting.

### Unfinished Business

1. Maintenance Building Project

### New Business

1. General Overview

### Closed Session

1. Discussion and possible vote concerning: Personnel Records, Performance Ratings, or Records Pertaining to Employees or Applicants for Employment per RSMo 610.021 (13). Closed Session. Closed Vote. Closed Record. (Board Only)

### Adjournment

Representatives of the news media may obtain copies of this notice by contacting the Battlefield Fire Protection District.

Posted: 9/6/2024 12:00 AM certified by the undersigned that a true copy of the foregoing agenda was posted at the Battlefield Administration and Training Center in Battlefield, Missouri.

  
Fire Chief





# Battlefield Fire Protection District Battlefield Volunteer Fire Department Minutes August 2024 Regular Board Meeting



**Location of Meeting:** 4117 West Second St.  
Battlefield, MO 65619

**Time of Meeting** 5:00 PM

**Date of Meeting:** August 20, 2024

The meeting of the Battlefield Fire Protection District Board of Directors was called to order by Chairman Trevor Crist at 5 pm. A roll call was taken, and a quorum was established. Board Members Present: Chairman Trevor Crist, Treasurer Mark Pon, Vice-Chair Danny Perches, Member Jen Albers and Member Scott Lambeth.

Mr. Lambeth moved to approve the agenda, 2<sup>nd</sup> by Mr. Pon. Motion carried.

#### **Approval of Last Month's Minutes:**

1. Approval of Regular Minutes- Mr. Pon moved to approve the Regular Meeting minutes. 2<sup>nd</sup> by Mr. Perches. Motion carried.

#### **Financial Business:**

1. The Board addressed bills to be paid and signed checks.
2. Treasurer Mark Pon discussed the July financial report and review of cash assets. Battlefield Volunteer Fire Department's checking account indicates \$5,543.45. Battlefield Fire Protection District's ICS account holds \$5,617,069.05 and Money Market holds \$64,397.67.
3. Fire Chief Moore briefly reviewed line items on the financials.
4. Mr. Pon moved to approve the financials 2<sup>nd</sup> by Ms. Albers. Motion carried.

**Public Comments:** None

#### **Unfinished Business:**

1. Maintenance Building Project
  - Eric Street, a representative from Buxton Kubik and Dodd was available for questions. Staff provided their recommendations to the board. The board elected to table the discussion and reassess at the Special Board Meeting for the Levy.

## **New Business:**

### **1. Resolution 24.003-Conflict of Interest**

- Mr. Pon moved to have the first reading of Bill No. 24-003 by title only. 2<sup>nd</sup> by Mr. Lambeth. A Roll call vote was taken, and the vote was: Trevor Crist aye; Mark Pon aye; Scott Lambeth aye; Danny Perches aye, and Jen Albers aye. Motion carried.
- Bill No. 24-003 read by title only by Fire Chief Scott Moore. Mr. Perches moved to approve the first reading of Bill No. 24-003. 2<sup>nd</sup> by Mr. Pon. A Roll call vote was taken, and the vote was: Trevor Crist aye; Mark Pon aye; Scott Lambeth aye; Danny Perches aye, and Jen Abers aye. Motion carried.
- Mr. Pon moved to have the second and final reading of Bill No. 24-003 by title only. 2<sup>nd</sup> by Ms. Albers. A Roll call vote was taken, and the vote was: Trevor Crist aye; Mark Pon aye; Scott Lambeth aye; Danny Perches aye, and Jen Albers aye. Motion carried.
- Bill No. 24-003 read by title by only by Fire Chief Scott Moore. Mr. Pon moved to approve the second and final reading Bill No. 24-003 for final passage and to make it Ordinance no 24-003. A Roll call vote was taken, and the vote was: Trevor Crist aye; Mark Pon aye; Scott Lambeth aye; Danny Perches aye, and Jen Albers aye. Motion carried.
- Bill No.24-003 was passed into Ordinance 24-003.

### **2. 2025 Levy**

- Chief Moore presented the Tax Levy Report and Pro-Forma depicting the proposed tax levy for 2025. All documentation was reviewed by and received from the Missouri State Auditor's Office and the Greene County Clerk's Office. The Levy information has been posted and will be voted on following the seven-day posting period at the next board meeting.

### **3. Labor/Management Agreement**

- Staff received a letter of intent to negotiate from the Southern Missouri Professional Fire Fighters (IAFF) Local 152. Chief Moore will be coordinating the first meeting of the Labor Management Committee in September. No further action needed.

### **4. General Overview**

- Staff provided a review of their monthly reports.
- Green sheet recognition was presented to the Board by Fire Chief Scott Moore.



# Battlefield Fire Protection District Battlefield Volunteer Fire Department



## Minutes

### August 2024 Regular Board Meeting


**Closed Session:**


1. Information only pursuant to RSMO 610.021 (13). Closed Session. Closed Record.  
 Motion to go out of open session by Mr. Perches. 2<sup>nd</sup> by Mr. Lambeth. Motion carried.  
 Out of Open Session at 6:19 pm.  
 Motion to go into Closed Session by Mr. Pon. 2<sup>nd</sup> by Ms. Albers. Motion carried.  
 Into Closed Session 6:22 pm  
 Roll Call: Mark Pon, Trevor Crist, Scott Lambeth, Danny Perches, and Jen Albers.  
 Motion to go out of Closed Session by Ms. Albers. 2<sup>nd</sup> by Mr. Lambeth. Motion carried.  
 Out of Closed Session: 6:59 pm  
 Motion to go into Open Session by Mr. Perches. 2<sup>nd</sup> by Mr. Pon. Motion carried.  
 Into Open Session: 7:02 pm  
 Roll Call: Mark Pon, Trevor Crist, Danny Perches, Jen Albers and Scott Lambeth.

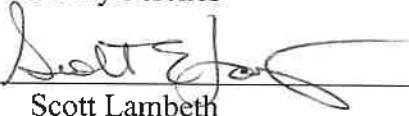
A Special Board Meeting has been scheduled for Monday, August 26<sup>th</sup> at 3:30pm


**Adjournment:**

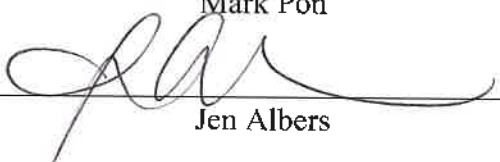
Mr. Perches moved to adjourn at 7:02 pm.  
 Approved by:

  
 \_\_\_\_\_  
 Trevor Crist

  
 \_\_\_\_\_  
 Danny Perches

  
 \_\_\_\_\_  
 Scott Lambeth

  
 \_\_\_\_\_  
 Mark Pon

  
 \_\_\_\_\_  
 Jen Albers





# Battlefield Fire Protection District Battlefield Volunteer Fire Department



## Minutes

### August 2024 Special Board Meeting

**Location of Meeting:**

4117 West Second St.  
Battlefield, MO 65619

**Time of Meeting:**

3:30 PM

**Date of Meeting:**

August 26, 2024

The meeting of the Battlefield Fire Protection District Board of Directors was called to order by Chairman Trevor Crist at 3:30 PM. A roll call was taken, and a quorum was established. Board Members Present: Chairman Trevor Crist, Danny Perches, Mark Pon, Jen Albers, and Scott Lambeth.

Mr. Pon moved to approve the agenda, 2<sup>nd</sup> by Mr. Lambeth. Motion carried unanimously.

**Public Comments:** None

**Unfinished Business:**

1. Maintenance Building Project- Discussion was held on the bids received for the proposed new maintenance building including a review of the financial impact of the project and necessity of bid alternates. Mr. Pon made a motion to accept the bid from Rich Kramer Construction including bid alternates 1, 2, and 3 only. 2<sup>nd</sup> by Mr. Lambeth. Motion carried unanimously.
2. Levy Discussion 2025- Chief Moore presented the pro-forma and documentation provided by the Greene County Collector and Assessor. Discussion was held on anticipated revenue and the impact of the Hancock Amendment on the current levy.

Mr. Lambeth motioned to set the 2025 levy for the Battlefield Fire Protection District at \$.7833. 2<sup>nd</sup> by Mr. Pon. Motion carried unanimously.

**Adjournment:**

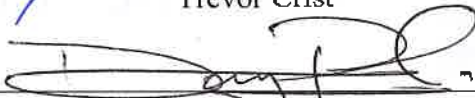
Mr. Perches moved to adjourn at 4:23 PM.

Approved by:



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Trevor Crist



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Danny Perches

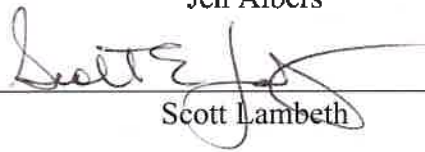


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Mark Pon

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Jen Albers



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Scott Lambeth

3:04 PM  
09/04/24  
Cash Basis

**Battlefield Volunteer Fire Department**  
**Statement of Net Assets**

**As of August 31, 2024**  
**Aug 31, 24**

**ASSETS**

**Current Assets**

**Checking/Savings**

1050 - Oakstar Volunteer Account 5,545.56

**Total Checking/Savings** 5,545.56

**Total Current Assets** 5,545.56

**TOTAL ASSETS** 5,545.56

**LIABILITIES & Revenue**

**Revenue**

1110 - Retained Earnings 5,528.95

**Net Revenue** 16.61

**Total Revenue** 5,545.56

**TOTAL LIABILITIES & Revenue** 5,545.56

3:05 PM  
09/04/24  
Cash Basis

**Battlefield Volunteer Fire Department**  
**Statement of Net Activities**  
August 2024

	<u>Aug 24</u>
Ordinary Revenue/Expense	
Revenue	
4140 - Interest Revenue	2.11
Total Revenue	<u>2.11</u>
Net Ordinary Revenue	<u>2.11</u>
Net Revenue	<u><u>2.11</u></u>

**Battlefield Fire Protection District**  
**Statement of Activities**  
 August 2024

2:50 PM  
 09/04/2024  
 Cash Basis

	<u>Aug 24</u>	<u>Jan - Aug 24</u>
<b>Revenue</b>		
<b>4000 · Revenue</b>		
4005 · Tax Revenue	23,426.37	5,557,462.53
4010 · Tax Interest Revenue	4,411.64	29,462.73
4050 · Miscellaneous Revenue	723.70	66,433.54
4060 · Interest Revenue	21,843.85	203,681.40
<b>Total 4000 · Revenue</b>	<u>50,405.56</u>	<u>5,857,040.20</u>
<b>Total Revenue</b>	<u>50,405.56</u>	<u>5,857,040.20</u>
<b>Gross Profit</b>	50,405.56	5,857,040.20
<b>Expense</b>		
<b>5000 · Capital Expense</b>		
5015 · Uniforms/PPE/Bunker Gear	0.00	5,257.00
5020 · Building Lease	0.00	108,687.50
5030 · Information Technology	599.00	1,041.21
5035 · Communications	0.00	5,061.38
5040 · Firefighting/EMS	344,504.24	347,533.09
5052 · Fitness Equipment	0.00	3,412.77
5055 · Vehicles	0.00	7,589.38
<b>Total 5000 · Capital Expense</b>	<u>345,103.24</u>	<u>478,582.33</u>
<b>6000 · Communications</b>		
6003 · MDT/Cell Phones	1,058.66	10,746.55
6020 · Managed IT Service	780.22	6,105.44
<b>Total 6000 · Communications</b>	<u>1,838.88</u>	<u>16,851.99</u>
<b>6100 · Insurance</b>		
6110 · Workman's Compensation	14,226.88	115,311.12
6115 · Commercial & Property	500.00	58,860.50
6120 · Medical, Dental, Vision	23,884.13	208,765.04
6122 · MOCIP	0.00	4,185.00
6125 · FFAM Dues	220.00	320.00
<b>Total 6100 · Insurance</b>	<u>38,831.01</u>	<u>387,441.66</u>
<b>6200 · Maintenance &amp; Repairs</b>		
6205 · Gas/Diesel	3,718.13	29,259.04
6210 · Apparatus Repair	4,546.81	25,453.02
6215 · Stations & Buildings	1,065.74	24,708.89
6220 · Lawn Maintenance	0.00	5,996.80
6225 · Equipment Maintenance	0.00	4,358.78
6235 · Headquarters Maintenance	1,209.00	9,806.00
6255 · Maintenance Shop Equipment	1,040.35	1,361.64
6280 · SCBA Flow Testing	0.00	2,035.00
<b>Total 6200 · Maintenance &amp; Repairs</b>	<u>11,580.03</u>	<u>102,979.17</u>
<b>6300 · Office/Stations</b>		

	<u>Aug 24</u>	<u>Jan - Aug 24</u>
6305 · Software Expense	0.00	18,331.39
6315 · Accounting Fees	742.00	6,674.45
6325 · Postage/Shipping	0.00	136.00
6330 · Subscriptions/Memberships	1,200.00	14,614.45
6335 · Advertising/Printing/Postings	438.83	4,901.72
<b>Total 6300 · Office/Stations</b>	<b>2,380.83</b>	<b>44,658.01</b>
<b>6400 · Training</b>		
6410 · Training Classes	4,957.48	20,575.85
6415 · Equipment	0.00	88,215.20
<b>Total 6400 · Training</b>	<b>4,957.48</b>	<b>108,791.05</b>
<b>6500 · Legal</b>		
6510 · Audit Fees	0.00	5,750.00
6525 · Cafeteria Pass Thru	-0.18	1,537.99
6535 · Attorney Fees	0.00	674.28
<b>Total 6500 · Legal</b>	<b>-0.18</b>	<b>7,962.27</b>
<b>6600 · Salaries</b>		
6605 · District Personnel	208,815.12	1,753,905.51
6610 · Board of Directors		
6612 · Chaplain Expense	31.26	395.33
6610 · Board of Directors - Other	1,133.33	5,833.28
<b>Total 6610 · Board of Directors</b>	<b>1,164.59</b>	<b>6,228.61</b>
6620 · Employer Payroll Taxes	2,973.85	24,378.16
6625 · Lagers	44,987.73	343,659.25
6635 · Uniforms	96.09	7,643.00
6640 · 457 Pass Thru	0.00	4,050.20
6655 · Expense Account	191.10	500.68
6665 · Special Overtime	5,776.42	19,875.84
6668 · Union Dues Passthrough	-61.86	3,093.00
6675 · Background Check	154.86	154.86
<b>Total 6600 · Salaries</b>	<b>264,097.90</b>	<b>2,163,489.11</b>
<b>6700 · Medical</b>		
6710 · Employee Physicals/POET	0.00	691.82
<b>Total 6700 · Medical</b>	<b>0.00</b>	<b>691.82</b>
<b>6750 · Utilities</b>		
6755 · Water	191.44	994.57
6760 · Sanitation	264.60	3,062.39
6765 · Sewer	288.79	1,556.96
6770 · Electric/Gas	3,617.53	23,245.97
6775 · Internet/Phones/Cable	712.66	11,698.75
<b>Total 6750 · Utilities</b>	<b>5,075.02</b>	<b>40,558.64</b>
<b>6800 · Supplies</b>		
6810 · Public Relations/Outreach	2,476.60	48,122.92
6815 · Logo Imprinted Supplies	0.00	16.00
6820 · Fire & EMS Expendables	157.56	4,936.87

	<u>Aug 24</u>	<u>Jan - Aug 24</u>
6830 · Janitorial Supplies	291.99	3,038.68
6835 · Stations/Buildings Supplies	217.38	3,959.70
<b>Total 6800 · Supplies</b>	<u>3,143.53</u>	<u>60,074.17</u>
6850 · Property Improvements		
6860 · Stations/Buildings	6,949.88	106,520.95
<b>Total 6850 · Property Improvements</b>	<u>6,949.88</u>	<u>106,520.95</u>
<b>Total Expense</b>	<u>683,957.62</u>	<u>3,518,601.17</u>
<b>Net Revenue</b>	<u>-633,552.06</u>	<u>2,338,439.03</u>

**Battlefield Fire Protection District**  
**Statement of Net Assets**  
As of August 31, 2024

2:50 PM

09/04/2024

Cash Basis

Aug 31, 24

**ASSETS**

**Current Assets**

**Checking/Savings**

1000 · OakStar - ICS	4,924,851.92
1005 · OakStar - Money Market	64,656.76
1025 · Oakstar - Operating	112,356.93
1105 · Petty Cash	131.66
1199 · Allowance for Restricted Funds	<u>-2,783,982.00</u>

**Total Checking/Savings** 2,318,015.27

**Total Current Assets** 2,318,015.27

**Fixed Assets**

1505 · Office Equipment	850.09
1508 · Vehicles	<u>47,868.00</u>

**Total Fixed Assets** 48,718.09

**TOTAL ASSETS** 2,366,733.36

**LIABILITIES & Revenue**

**Revenue**

**3200 · Fund Balances**

3100 · Restricted Fund - Operating	-1,000,000.00
3120 · Restricted Fund-Emergency Equip	-839,576.00
3140 · Restricted Fund - Bldg Reserve	-944,406.00
3200 · Fund Balances	<u>2,487,239.86</u>

**Total 3200 · Unrestricted Fund Balances** -296,742.14

**32000 · Retained Earnings** 325,036.47

**Net Revenue** 2,338,439.03

**Total Revenue** 2,366,733.36

**TOTAL LIABILITIES & Revenue** 2,366,733.36

**Battlefield Fire Protection District**  
**Statement of Cash Flows**  
**August 2024**

2:51 PM

Cash Basis

	<u>Aug 24</u>	<u>Jul 24</u>	<u>% Change</u>
<b>Revenue</b>			
<b>4000 · Revenue</b>			
4005 · Tax Revenue	23,426.37	17,996.94	30.17%
4010 · Tax Interest Revenue	4,411.64	2,698.44	63.49%
4050 · Miscellaneous Revenue	723.70	2,663.00	-72.82%
4060 · Interest Revenue	21,843.85	24,068.88	-9.24%
<b>Total 4000 · Revenue</b>	<u>50,405.56</u>	<u>47,427.26</u>	<u>6.28%</u>
<b>Total Revenue</b>	<u>50,405.56</u>	<u>47,427.26</u>	<u>6.28%</u>
<b>Gross Profit</b>	<u>50,405.56</u>	<u>47,427.26</u>	<u>6.28%</u>
<b>Expense</b>			
<b>5000 · Capital Expense</b>			
5015 · Uniforms/PPE/Bunker Gear	0.00	5,157.00	-100.0%
5020 · Building Lease	0.00	99,343.75	-100.0%
5030 · Information Technology	599.00	22.99	2,505.48%
5040 · Firefighting/EMS	344,504.24	89.89	383,150.91%
5052 · Fitness Equipment	0.00	3,412.77	-100.0%
<b>Total 5000 · Capital Expense</b>	<u>345,103.24</u>	<u>108,026.40</u>	<u>219.46%</u>
<b>6000 · Communications</b>			
6003 · MDT/Cell Phones	1,058.66	890.83	18.84%
6020 · Managed IT Service	780.22	780.22	0.0%
<b>Total 6000 · Communications</b>	<u>1,838.88</u>	<u>1,671.05</u>	<u>10.04%</u>
<b>6100 · Insurance</b>			
6110 · Workman's Compensation	14,226.88	14,226.88	0.0%
6115 · Commercial & Property	500.00	427.00	17.1%
6120 · Medical, Dental, Vision	23,884.13	24,385.86	-2.06%
6125 · FFAM Dues	220.00	0.00	100.0%
<b>Total 6100 · Insurance</b>	<u>38,831.01</u>	<u>39,039.74</u>	<u>-0.54%</u>
<b>6200 · Maintenance &amp; Repairs</b>			
6205 · Gas/Diesel	3,718.13	3,227.39	15.21%
6210 · Apparatus Repair	4,546.81	1,922.95	136.45%
6215 · Stations & Buildings	1,065.74	9,937.49	-89.28%
6220 · Lawn Maintenance	0.00	3,990.00	-100.0%
6225 · Equipment Maintenance	0.00	253.95	-100.0%
6235 · Headquarters Maintenance	1,209.00	1,209.00	0.0%
6255 · Maintenance Shop Equipment	1,040.35	3.90	26,575.64%
<b>Total 6200 · Maintenance &amp; Repairs</b>	<u>11,580.03</u>	<u>20,544.68</u>	<u>-43.64%</u>
<b>6300 · Office/Stations</b>			
6315 · Accounting Fees	742.00	773.00	-4.01%
6325 · Postage/Shipping	0.00	136.00	-100.0%
6330 · Subscriptions/Memberships	1,200.00	230.32	421.01%
6335 · Advertising/Printing/Postings	438.83	0.00	100.0%

	<u>Aug 24</u>	<u>Jul 24</u>	<u>% Change</u>
<b>Total 6300 · Office/Stations</b>	2,380.83	1,139.32	108.97%
<b>6400 · Training</b>			
6410 · Training Classes	4,957.48	292.12	1,597.07%
<b>Total 6400 · Training</b>	4,957.48	292.12	1,597.07%
<b>6500 · Legal</b>			
6525 · Cafeteria Pass Thru	-0.18	556.32	-100.03%
6535 · Attorney Fees	0.00	285.00	-100.0%
<b>Total 6500 · Legal</b>	-0.18	841.32	-100.02%
<b>6600 · Salaries</b>			
6605 · District Personnel	208,815.12	210,079.93	-0.6%
6610 · Board of Directors			
6612 · Chaplain Expense	31.26	31.24	0.06%
6610 · Board of Directors - Other	1,133.33	633.33	78.95%
<b>Total 6610 · Board of Directors</b>	1,164.59	664.57	75.24%
6620 · Employer Payroll Taxes	2,973.85	2,949.34	0.83%
6625 · Lagers	44,987.73	45,291.14	-0.67%
6635 · Uniforms	96.09	0.00	100.0%
6640 · 457 Pass Thru	0.00	5,181.60	-100.0%
6655 · Expense Account	191.10	38.33	398.57%
6665 · Special Overtime	5,776.42	2,893.88	99.61%
6668 · Union Dues Passthrough	-61.86	2,041.38	-103.03%
6675 · Background Check	154.86	0.00	100.0%
<b>Total 6600 · Salaries</b>	264,097.90	269,140.17	-1.87%
<b>6750 · Utilities</b>			
6755 · Water	191.44	117.24	63.29%
6760 · Sanitation	264.60	264.60	0.0%
6765 · Sewer	288.79	195.45	47.76%
6770 · Electric/Gas	3,617.53	3,199.47	13.07%
6775 · Internet/Phones/Cable	712.66	2,175.96	-67.25%
<b>Total 6750 · Utilities</b>	5,075.02	5,952.72	-14.75%
<b>6800 · Supplies</b>			
6810 · Public Relations/Outreach	2,476.60	9,462.29	-73.83%
6815 · Logo Imprinted Supplies	0.00	16.00	-100.0%
6820 · Fire & EMS Expendables	157.56	430.99	-63.44%
6830 · Janitorial Supplies	291.99	412.26	-29.17%
6835 · Stations/Buildings Supplies	217.38	98.85	119.91%
<b>Total 6800 · Supplies</b>	3,143.53	10,420.39	-69.83%
<b>6850 · Property Improvements</b>			
6860 · Stations/Buildings	6,949.88	7,861.15	-11.59%
<b>Total 6850 · Property Improvements</b>	6,949.88	7,861.15	-11.59%
<b>Total Expense</b>	<u>683,957.62</u>	<u>464,929.06</u>	<u>47.11%</u>
<b>Net Revenue</b>	<u>-633,552.06</u>	<u>-417,501.80</u>	<u>-51.75%</u>

**Battlefield Fire Protection District  
Profit & Loss Budget Performance  
Aug 2024**

	Annual Budget	Aug 24	% Received	Jan-Aug YTD	% Received YTD	Revenue Amt Expected	Revenue Over Expected
<b>Revenue</b>							
4000 - Revenue							
4005 - Tax Revenue	6,389,953.00	23,426.37	0.37%	5,557,462.53	86.97%	832,490.47	0.00
4010 - Tax Revenue Interest	0.00	4,411.64	0.00%	29,462.73	0.00%	0.00	29,462.73
4050 - Miscellaneous Revenue	0.00	723.70	0.00%	66,433.54	0.00%	0.00	66,433.54
4060 - Interest Revenue	0.00	21,843.85	0.00%	203,681.40	0.00%	0.00	203,681.40
<b>Total 4000 - Revenue</b>	<b>6,389,953.00</b>	<b>50,405.56</b>	<b>0.79%</b>	<b>5,857,040.20</b>	<b>91.66%</b>	<b>832,490.47</b>	<b>299,577.67</b>
<b>Expense</b>							
5000 - Capital Expense							
5015 - Uniforms/PPE/Bunker Gear	65,000.00	0.00	0.00%	5,257.00	8.09%	59,743.00	
5020 - Building Lease	111,450.00	0.00	0.00%	106,687.50	97.52%	2,762.50	
5030 - Information Technology	25,000.00	599.00	2.40%	1,041.21	4.16%	23,958.79	
5035 - Communications	40,000.00	0.00	0.00%	5,061.38	0.00%	34,938.62	
5040 - Firefighting/EMS	550,000.00	344,504.24	62.64%	347,533.09	63.19%	202,466.91	
5052 - Fitness Equipment	5,700.00	0.00	0.00%	3,412.77	59.87%	2,287.23	
5055 - Vehicles	70,000.00	0.00	0.00%	7,589.38	0.00%	62,410.62	
<b>Total 5000 - Capital Expense</b>	<b>867,150.00</b>	<b>345,103.24</b>	<b>39.80%</b>	<b>476,582.33</b>	<b>55.19%</b>	<b>388,567.67</b>	
6000 - Communications							
6003 - MDT/Cell Phones	15,000.00	1,058.66	7.06%	10,746.55	71.64%	4,253.45	
6020 - Managed IT Service	16,260.00	780.22	4.80%	6,105.44	37.55%	10,154.56	
<b>Total 6000 - Communications</b>	<b>31,260.00</b>	<b>1,838.88</b>	<b>5.88%</b>	<b>16,851.99</b>	<b>53.91%</b>	<b>14,408.01</b>	
6100 - Insurance							
6110 - Workman's Compensation	137,203.02	14,226.88	10.37%	115,311.12	84.04%	21,891.90	
6115 - Commercial & Property	115,821.00	500.00	0.43%	58,860.50	50.82%	56,960.50	
6120 - Medical, Dental, Vision	300,079.00	23,884.13	7.96%	208,765.04	69.57%	91,313.96	
6122 - MOPIP	7,755.00	0.00	0.00%	4,185.00	53.98%	3,570.00	
6125 - FFAM Dues	6,000.00	220.00	3.67%	320.00	5.33%	5,680.00	
<b>Total 6100 - Insurance</b>	<b>566,858.02</b>	<b>38,831.01</b>	<b>6.85%</b>	<b>387,441.66</b>	<b>68.35%</b>	<b>179,416.36</b>	

**Battlefield Fire Protection District  
Profit & Loss Budget Performance  
Aug 2024**

	Annual Budget	Aug 24	% Received	Jan-Aug YTD	% Received YTD	Revenue Still Expected	Revenue Over Expected
<b>6200 - Maintenance &amp; Repairs</b>							
6205 - Gas/Diesel	52,000.00	3,718.13	7.15%	29,259.04	56.27%	22,740.96	
6210 - Apparatus Repair	50,000.00	4,546.81	9.09%	25,453.02	50.91%	24,546.98	
6215 - Stations & Buildings	55,000.00	1,065.74	1.94%	24,708.89	44.93%	30,291.11	
6220 - Lawn Maintenance	10,500.00	0.00	0.00%	5,996.80	57.11%	4,503.20	
6225 - Equipment Maintenance	7,000.00	0.00	0.00%	4,358.78	62.27%	2,641.22	
6235 - Headquarters Maintenance	15,000.00	1,209.00	8.06%	9,806.00	65.37%	5,194.00	
6250 - Ground/Aerial Ladder Testing	2,000.00	0.00	0.00%	0.00	0.00%	2,000.00	
6255 - Maintenance Shop Equipment	1,750.00	1,040.35	59.45%	1,361.64	77.81%	388.36	
6280 - SCBA Flow Testing	5,000.00	0.00	0.00%	2,035.00	40.70%	2,965.00	
<b>Total 6200 - Maintenance &amp; Repairs</b>	<b>198,250.00</b>	<b>11,580.03</b>	<b>5.84%</b>	<b>102,979.17</b>	<b>51.94%</b>	<b>95,270.83</b>	
<b>6300 - Office/Stations</b>							
6305 - Software Expense	36,040.00	0.00	0.00%	18,331.39	50.86%	17,708.61	
6315 - Accounting Fees	9,400.00	742.00	7.89%	6,674.45	71.00%	2,725.55	
6325 - Postage/Shipping	700.00	0.00	0.00%	136.00	19.43%	564.00	
6330 - Subscriptions/Memberships	17,500.00	1,200.00	6.86%	14,614.45	83.51%	2,885.55	
6335 - Advertising/Printing/Postings	1,000.00	438.83	43.88%	4,901.72	490.17%	-3,901.72	4/8/2024
<b>Total 6300 - Office/Stations</b>	<b>64,640.00</b>	<b>2,380.83</b>	<b>3.68%</b>	<b>44,658.01</b>	<b>69.09%</b>	<b>19,981.99</b>	
<b>6400 - Training</b>							
	<b>Annual Budget</b>	<b>Aug 24</b>	<b>Used in</b>	<b>Aug</b>	<b>Jan-Aug</b>	<b>YTD</b>	<b>Budget Used Available</b>
6410 - Training Classes	51,200.00	4,957.48	9.68%	20,575.85	40.19%	30,624.15	
6415 - Equipment	100,000.00	0.00	0.00%	88,215.20	88.22%	11,784.80	
<b>Total 6400 - Training</b>	<b>151,200.00</b>	<b>4,957.48</b>	<b>3.28%</b>	<b>108,791.05</b>	<b>71.95%</b>	<b>42,408.95</b>	

**Battlefield Fire Protection District  
Profit & Loss Budget Performance  
Aug 2024**

	Annual Budget	Aug 24	% Received	Jan-Aug YTD	% Received YTD	Revenue Sum Expected	Revenue Over Expected
<b>6500 - Legal</b>							
6510 - Audit Fees	6,700.00	0.00	0.00%	5,750.00	85.82%	950.00	
6525 - Cafeteria Pass Thru	1,500.00	-0.18	-0.01%	1,537.99	102.53%	-37.99	
6535 - Attorney Fees	5,000.00	0.00	0.00%	674.28	13.49%	4,325.72	
<b>Total 6500 - Legal</b>	<b>13,200.00</b>	<b>-0.18</b>	<b>0.00%</b>	<b>7,962.27</b>	<b>60.32%</b>	<b>5,237.73</b>	
<b>6600 - Salaries</b>							
6605 - District Personnel	2,770,616.00	208,815.12	7.54%	1,753,905.51	63.30%	1,016,710.49	
6610 - Board of Directors							
6612 - Chaplain Expense	2,000.00	31.26	1.56%	395.33	19.77%	1,604.67	
6610 - Board of Directors - Other	9,400.00	1,133.33	12.06%	5,833.28	62.06%	3,566.72	
<b>Total 6610 - Board of Directors</b>	<b>11,400.00</b>	<b>1,164.59</b>	<b>10.22%</b>	<b>6,228.61</b>	<b>54.64%</b>	<b>5,171.39</b>	
6620 - Employer Payroll Taxes	48,203.00	2,973.85	6.04%	24,378.16	49.55%	24,824.84	
6625 - Lagers	626,086.00	44,987.73	7.19%	343,659.25	54.89%	282,426.75	
6635 - Uniforms	10,000.00	96.09	0.96%	7,643.00	76.43%	2,357.00	
6640 - 457 Pass Thru		0.00	0.00%	4,050.20	0.00%	-4,050.20	
6650 - Miscellaneous Board Expense	500.00	0.00	0.00%	0.00	0.00%	500.00	
6655 - Expense Account	3,000.00	191.10	6.37%	500.68	16.69%	2,499.32	
6665 - Special Overtime	50,000.00	5,776.42	11.55%	19,875.84	39.75%	30,124.16	
6668 - Union Dues Pass Thru		-61.86	0.00%	3,093.00	0.00%	-3,093.00	
6675 - Background Check	3,250.00	154.86	4.76%	154.86	4.76%	3,095.14	
<b>Total 6600 - Salaries</b>	<b>3,524,055.00</b>	<b>264,097.90</b>	<b>7.49%</b>	<b>2,163,489.11</b>	<b>61.39%</b>	<b>1,360,565.89</b>	
<b>6700 - Medical</b>							
6710 - Employee Physicals/POET	38,000.00	0.00	0.00%	691.82	1.82%	37,308.18	
<b>Total 6700 - Medical</b>	<b>38,000.00</b>	<b>0.00</b>	<b>0.00%</b>	<b>691.82</b>	<b>1.82%</b>	<b>37,308.18</b>	

**Battlefield Fire Protection District  
Profit & Loss Budget Performance  
Aug 2024**

	Annual Budget	Aug 24	% Received	Jan-Aug YTD	% Received YTD	Revenue Still Expected	Revenue Over Expected
<b>6750 - Utilities</b>							
6755 - Water	2,000.00	191.44	9.57%	894.57	49.73%	1,005.43	
6760 - Sanitation	3,250.00	264.60	8.14%	3,082.39	94.23%	187.61	
6765 - Sewer	3,000.00	288.79	9.63%	1,556.96	51.90%	1,443.04	
6770 - Electric/Gas	36,000.00	3,617.53	10.34%	23,246.97	68.42%	11,754.03	
6775 - Internet/Phones/Cable	14,300.00	712.66	4.98%	11,696.75	81.81%	2,601.25	
<b>Total 6750 - Utilities</b>	<b>57,550.00</b>	<b>5,075.02</b>	<b>8.82%</b>	<b>40,556.64</b>	<b>70.48%</b>	<b>16,991.36</b>	
<b>6800 - Supplies</b>							
6810 - Public Relations/Outreach	53,616.00	2,476.60	4.62%	46,122.92	89.75%	5,493.08	
6815 - Logo Imprinted Supplies	3,000.00	0.00	0.00%	16.00	0.53%	2,984.00	
6820 - Fire & EMS Expendables	5,000.00	157.56	3.15%	4,936.87	98.74%	63.13	
6830 - Janitorial Supplies	3,000.00	291.99	9.73%	3,038.68	101.29%	-38.68	
6835 - Stations/Buildings Supplies	9,500.00	217.38	2.29%	3,969.70	41.68%	5,540.30	
<b>Total 6800 - Supplies</b>	<b>74,116.00</b>	<b>3,143.53</b>	<b>4.24%</b>	<b>60,074.17</b>	<b>81.05%</b>	<b>14,041.83</b>	
<b>6850 - Property Improvements</b>							
6860 - Stations/Buildings	800,000.00	6,949.88	0.87%	106,520.95	13.32%	693,479.05	
<b>Total 6850 - Property Improvements</b>	<b>800,000.00</b>	<b>6,949.88</b>	<b>0.87%</b>	<b>106,520.95</b>	<b>13.32%</b>	<b>693,479.05</b>	
<b>Total Expense</b>	<b>6,386,279.02</b>	<b>683,957.62</b>	<b>10.71%</b>	<b>3,518,601.17</b>	<b>55.10%</b>	<b>2,843,794.14</b>	
<b>Net Revenue</b>	<b>3,673.98</b>	<b>-633,552.06</b>	<b>-17244.30%</b>	<b>2,338,439.03</b>	<b>63648.66%</b>	<b>-2,011,303.67</b>	
<b>Total Budget Amount</b>						<b>2,843,794.14</b>	

	Monthly Expenditures	YTD Expenditures
	683,957.62	3,518,601.17

<b>Restricted Funds</b>	
Operating Reserve	1,000,000.00
Emergency Equipment Reserve	839,576.00
Building Reserve	944,406.00
<b>Total Contingency Fund</b>	<b>2,783,982.00</b>

**Battlefield Fire Protection District**  
**Transaction Detail By Account**  
 January through August 2024

	Name	Memo
4000 · Revenue		
4050 · Miscellaneous Revenue		
	GovDeals	Deposit
	Greene County Collector of Revenue	ARPA County Wide Application
	Ozarks Technical Community College	Firefighter I & II Classes
	Jennifer Albers	FFAM
	Office of the Treasurer Greene County	ARPA County Wide Application 3023
	LexisNexis	Incident report
	Willard Fire	Deposit
	Greene County Treasurer	Deposit
	GovDeals	Deposit
	CITY OF SPRINGFIELD	Annexations for 2017-2021
	City of Aurora	Deposit
	Brookline Fire Protection	Deposit
	Ozarks Technical Community College	Deposit
	GovDeals	Deposit
	LexisNexis	report request
	BusinessPlans, Inc	COBRA premiums
Total 4050 · Miscellaneous Revenue		
Total 4000 · Revenue		
TOTAL		

**Battlefield Fire Protection Distri**  
**Transaction Detail By Acco**  
 January through August 2024

	<u>Paid Amount</u>
4000 · Revenue	
4050 · Miscellaneous Revenue	
	1,040.00
	11,986.38
	1,000.00
	50.00
	23,000.00
	10.00
	810.00
	113.18
	22,422.00
	1,810.28
	25.00
	780.00
	2,650.00
	3.00
	10.00
	723.70
Total 4050 · Miscellaneous Revenue	<u>66,433.54</u>
Total 4000 · Revenue	<u>66,433.54</u>
<b>TOTAL</b>	<u><u>66,433.54</u></u>



## **BATTLEFIELD FIRE PROTECTION DISTRICT**

[www.battlefieldfire.com](http://www.battlefieldfire.com) 

4117 W. Second Street  
Battlefield, MO 65619

FAX: (417) 887-9914  
CELL: (417) 343-4504

PHONE:(417) 881-9018



### **Administration – Chief Moore**

- I taught a 3-day Incident Command course in the district.
- We completed a promotional pinning for 2 firefighters released from probation.
- Calls for budget items went out to the staff.
- Our first anticipated budget meeting needs to be in October. Please be looking for a date to have our first budget workshop. Once I have the date I will work on the location.
- I am out of town for this meeting. Chief Anderson will be running the meeting for you all.

### **Operations – Deputy Chief Reynolds**

- August run statistics
  - Calls = 169 (-2.1% change from previous year)
    - 5 Building fires
    - Previous year = 176
    - YTD 2024 = 1469
  - Average Response = 6.07 minutes
    - YTD = 6.23 minutes
    - Target is 7.00 minutes.
  - Turnout time = 1:23
    - YTD = 1:22
    - Target is 1:30
- Awaiting radio bids from PSS. They should be dropped off at any time.
- The F150 has arrived and is in the process of being upfitted.
- We have met with reps from MacQueen and Precision over pumper specs. The process is moving along as planned.

### **Support Services – Division Chief Anderson (as of 9-1-24)**

#### **Community Risk Reduction Activities**

- Total contacts made through social media, the District website and Google Business for August 2024= 29,995.
- Crews installed 7 smoke alarms, 1 strobe alarm, and replaced 10 batteries for District citizens.
- Continued working on development of the District's community risk assessment.
- Attended a meeting of the SWMO Drug Poisoning Taskforce.
- Provided two CPR courses for District citizens with 17 total students attending.
- Attended a meeting of the IAFC Cooking Fire Prevention Task Force.
- Continued working with Springfield Fire to schedule Springfield Public Schools for fire prevention month.
- Assisted an HOA with ongoing Knox Box issues.
- Hosted a Red Cross blood drive with 17 blood donations collected.
- Attended a meeting of the District's CRR Committee. We are working on a new mascot.
- Attended the National Night Out event at Battlefield City Park with a duty crew.
- Attended an SME meeting with the Division of Fire Safety to review updates to the Firefighter I and II certification program.
- Attended Fire Instructor III training with Chief Burr at the Alabama Fire College.

*"We Serve"*



## BATTLEFIELD FIRE PROTECTION DISTRICT

[www.battlefieldfire.com](http://www.battlefieldfire.com) 

4117 W. Second Street  
Battlefield, MO 65619

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### **Workers Compensation, Safety, and Human Resources**

- The District had no work comp claims for this period.
- Continued to monitor active work comp claims.
- Attended a meeting to review District insurance coverage.
- Continued working with ESCI to complete the District's strategic plan update.
- Attended a meeting of the District's Health and Wellness Committee.
- Attended a meeting of the District's Safety Committee.
- Attended a meeting with the Nixa Fire Protection District to discuss their workers compensation and safety program.
- Reminder, the District BBQ is scheduled for September 21<sup>st</sup> from 10 am to 2 pm.

### **Training – Division Chief Burr**

- Training hours for August: 2,132 hours
  - YTD Hours = 13,686 hours
    - 2023 YTD Hours = 10,538 hours
- I attended an Exercise Planning Workgroup meeting for Greene County OEM.
- I received a proposed contract for the new maintenance facility from Rich Kramer Construction. It is currently being reviewed by our attorney, architect, and myself. You have been provided a copy in the board packet for your review as well.
- Chief Anderson and I attended Fire Instructor III in Alabama and have received our certifications.
- We conducted our initial in-service training on the new air packs. The crews will conduct more training over the coming weeks before we place them in service.
- I am working on placing a gear order. I will be ordering through NPPGov which is a nationally bid system.
- I will be teaching a class in Central Jackson County next week.
- I have sent out budget proposals from the line staff for the upcoming budget season.



# AIA® Document A101® – 2017

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

**AGREEMENT** made as of the Third day of September in the year Two Thousand Twenty-Four  
*(In words, indicate day, month and year.)*

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

Battlefield Fire Protection District  
4117 W. Second Street  
Battlefield, MO 65619  
Phone: 417-881-9018

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

Rich Kramer Construction, Inc.  
789 N. Miller Road  
Springfield, MO 65802  
Phone: 417-865-5959

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

Battlefield Fire Protection District's New Maintenance Facility 34195  
W. Second Street  
Battlefield, MO 65619

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

Buxton Kubik Dodd Design Collective  
Eric Street  
3100 S. National Avenue, Suite 300  
Springfield, MO 65807  
Phone: 417-890-5543

The Owner and Contractor agree as follows.

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

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

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

COPY

TABLE OF ARTICLES

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

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:

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

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

§ 3.3 Substantial Completion

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

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

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

Init.

[ X ] By the following date: June 30<sup>th</sup>, 2025.

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

Portion of Work	Substantial Completion Date
N/A	N/A

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

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be **Two Million Three Hundred Sixty-Four Thousand Four Hundred Seventy-One Dollars and Zero Cents (\$ 2,364,471.00 )**, subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

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

Item	Price
#1	\$ 318,337.00
#2	\$ 75,297.00
#3	\$ 163,137.00

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

Item	Price	Conditions for Acceptance
N/A	N/A	N/A

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

*(Paragraph deleted)*

Item	Price
#1 Removal of 250 cubic yards of unclassified/unsuitable soil and replacement with structural fill from off-site	\$ 8,750.00
#2 Remove and dispose of 50 cubic yards of footing and trench rock less than 10' below existing grade.	\$ 15,000.00
#3 Landscape material and installation	\$ 3,000.00
#4 Additional foundation/footing for PEMB design.	\$ 2,000.00

Init.

§ 4.4 Unit prices, if any:

Item	Units and Limitations	Price per Unit (\$0.00)
#1 General excavation, removal and disposal from site of unclassified material or unsuitable materials.	Per Cubic Yard	\$ 15.00
#2a Furnishing and placing of compacted borrow soil from site material.	Per Cubic Yard	\$ 25.00
#2b Furnishing and place of compacted borrow soil fill from off-site material.	Per Cubic Yard	\$ 20.00
#3 Compacted drainage fill, in place (clean ¾" crushed stone).	Per Cubic Yard	\$ 65.00
#4a Compacted engineered fill or structural fill; in place from site material.	Per Cubic Yard	\$ 25.00
#4b Compacted engineered fill or structural fill, in place from off-site material.	Per Cubic Yard	\$ 20.00
#5 Compacted granular fill, in place (base rock and gravel).	Per Cubic Yard	\$ 55.00
#6a Mass rock excavation and removal of other solid obstructions from the site.	Per Cubic Yard	\$ 325.00
#6b Footing and trench rock excavation less than 10 feet below existing grade and removal from the site.	Per Cubic Yard	\$ 300.00
#6c Footing and trench rock excavation more than 10 feet below existing grade and removal from the site.	Per Cubic Yard	\$ 375.00
#6d Pit rock excavation and removal from the site.	Per Cubic Yard	\$ 400.00
#7 Controlled low-strength material (1,000 PSI lean concrete) backfill, in place.	Per Cubic Yard	\$ 350.00

§ 4.5 Liquidated damages, if any:

*(Paragraph deleted)*

Liquidated damages in the amount of \$500.00 per calendar day for each day the project is not substantially complete, except as modified by Contract modification procedure.

§ 4.6 Other:

N/A

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

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

Init.

§ 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:

N/A

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 25th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 10 (ten) days after the Architect receives the Application for Payment.

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

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

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

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

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

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

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

#### § 5.1.7 Retainage

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

**5% (Five Percent)**

§ 5.1.7.1.1 The following items are not subject to retainage:

General Conditions, Insurance, and Bonds.

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

N/A

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

Work not complete on the Architect Punch List.

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

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

## § 5.2 Final Payment

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

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

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

N/A

## § 5.3 Interest

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

9 % Nine Percent

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

N/A

### § 6.2 Binding Dispute Resolution

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

*(Paragraph deleted)*

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

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

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

## ARTICLE 7 TERMINATION OR SUSPENSION

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

Init.

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

*(Paragraph deleted)*

10% (ten percent) mark up shall be paid for any work completed up to the termination date and all associated general conditions.

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

#### **ARTICLE 8 MISCELLANEOUS PROVISIONS**

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

§ 8.2 The Owner's representative:

Steven Burr, Division Chief  
Battlefield Fire Protection District  
4117 W. Second Street  
Battlefield, MO 65619  
Phone: 417-881-9018

§ 8.3 The Contractor's representative:

Richard G. Kramer, President  
Rich Kramer Construction, Inc.  
789 N. Miller Road  
Springfield, MO 65802  
Phone: 417-85-5959

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

#### **§ 8.5 Insurance and Bonds**

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

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

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

N/A

§ 8.7 Other provisions:

- .1 Delete Item I.2.O of the supplementary conditions.
- .2 All change proposals with a net increase shall have an allowable Overhead and Profit margin of Ten Percent (10%) not including costs for Bonds and Insurance. Costs for Bonds and Insurance shall not exceed Two Percent (2%). Total Overhead, Profit, Bonds, and Insurance shall not exceed Twelve Percent (12%).

Init.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 This Agreement is comprised of the following documents:

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

N/A

- .5 Drawings

Number	Title	Date
All sheets listed on GO-O	Construction Drawings	06/28/2024

- .6 Specifications

Section	Title	Date	Pages
All sections listed in Table of Contents 000005	Project Manual	06/28/2024	N/A

- .7 Addenda, if any:

Number	Date	Pages
#1	07/19/2024	3 Pages
#2	07/30/2024	4 Pages

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

- .8 Other

*(Paragraphs deleted)*

documents, if any, listed below:

RKC Bid Bond from United Fire and Casualty  
RKC Performance Bond  
RKC Labor and Materials Bond

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

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

Steven Burr, Division Chief

*(Printed name and title)*

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

Richard G. Kramer, President

*(Printed name and title)*

init.

# AIA® Document A101® – 2017 Exhibit A

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Third day of September in the year Two Thousand Twenty-Four for the following

### PROJECT:

Battlefield Fire Protection District's New Maintenance Facility 34195  
W. Second Street  
Battlefield, MO 65619

### THE OWNER:

Battlefield Fire Protection District  
4117 W. Second Street  
Battlefield, MO 65619

### THE CONTRACTOR:

Rich Kramer Construction, Inc.  
789 N. Miller Road  
Springfield, MO 65802

### TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

##### § A.2.2 Liability Insurance

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

### ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

Causes of Loss	Sub-Limit
N/A	N/A

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Paragraph deleted)*

Coverage	Sub-Limit
N/A	N/A

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ A.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

- § A.2.4.1 **Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

N/A

- § A.2.4.2 **Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

N/A

- § A.2.4.3 **Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

N/A

- § A.2.4.4 **Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

N/A

- § A.2.4.5 **Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

N/A

- § A.2.4.6 **Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

N/A

- § A.2.4.7 **Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

N/A

**§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Paragraph deleted)*

- § A.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.

N/A

- § A.2.5.2 **Other Insurance**

Init.

Coverage  
N/A

Limits  
N/A

## ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

### § A.3.1 General

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage 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 for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

### § A.3.2 Contractor's Required Insurance Coverage

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

N/A

### § A.3.2.2 Commercial General Liability

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each occurrence, Two Million Dollars and Zero Cents (\$ 2,000,000.00 ) general aggregate, and Two Million Dollars and Zero Cents (\$ 2,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.

Init.

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User Notes:

(861100609)

- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars and Zero Cents ( \$ 1,000,000.00 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents ( \$ 1,000,000.00 ) each accident, One Million Dollars and Zero Cents ( \$ 1,000,000.00 ) each employee, and One Million Dollars and Zero Cents ( \$ 1,000,000.00 ) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than N/A ( \$ N/A ) per claim and N/A ( \$ N/A ) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than N/A ( \$ N/A ) per claim and N/A ( \$ N/A ) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than N/A ( \$ N/A ) per claim and N/A ( \$ N/A ) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than N/A ( \$ N/A ) per claim and N/A ( \$ N/A ) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than N/A ( \$ N/A ) per claim and N/A ( \$ N/A ) in the aggregate.

**§ A.3.3 Contractor's Other Insurance Coverage**

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The

Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

None

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

- § A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Paragraph deleted)*

Type	Penal Sum (\$0.00)
Payment Bond	Full Contract Amount
Performance Bond	Full Contract Amount

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None

# **AIA® Document A201® – 2007**

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

for the following PROJECT:

Battlefield Fire Protection District New Maintenance Facility                      34195  
Battlefield, MO 65619

### **THE OWNER:**

Battlefield Fire Protection District  
4117 W. Second Street  
Battlefield, MO 65619

### **THE ARCHITECT:**

Buston Kubik Dodd Design Collective  
Eric Street  
3100S. National Avenue, Suite 300  
Springfield, MO 65807

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- 15       **CLAIMS AND DISPUTES**

### **ADDITIONS AND DELETIONS:**

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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.

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**§ 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

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submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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

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

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

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

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

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

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

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

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

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

Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

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

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

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

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

### **§ 3.16 ACCESS TO WORK**

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

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

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

### **§ 3.18 INDEMNIFICATION**

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

party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

#### **ARTICLE 4 ARCHITECT**

##### **§ 4.1 GENERAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

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

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

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

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

## § 5.3 SUBCONTRACTUAL RELATIONS

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

## § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

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

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

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

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

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

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

### **§ 6.2 MUTUAL RESPONSIBILITY**

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

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

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

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

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.1.4.

### § 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.

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§ 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

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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.

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§ 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.

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§ 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.

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**§ 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.

Init.

§ 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.

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:09:53 ET on 09/04/2024.

### **PAGE 1**

*(Name and location or address)*

Battlefield Fire Protection District New Maintenance Facility 34195  
Battlefield, MO 65619

...

*(Name, legal status and address)*

Battlefield Fire Protection District  
4117 W. Second Street  
Battlefield, MO 65619

### **THE ARCHITECT:**

Buston Kubik Dodd Design Collective  
*(Name, legal status and address)*Eric Street  
3100S. National Avenue, Suite 300  
Springfield, MO 65807

COPY

**Certification of Document's Authenticity**  
**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:09:53 ET on 09/04/2024 under Order No. 2114509592 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

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

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

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

COPY



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
08/28/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

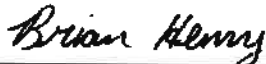
<b>PRODUCER</b> Barker Phillips Jackson, Inc PO Box 4207  Springfield MO 65808-4207		<b>CONTACT NAME:</b> Stacy Jensen, CISR <b>PHONE (A/C, No, Ext):</b> (417) 887-3550 <b>E-MAIL ADDRESS:</b> sjensen@bpj.com <b>FAX (A/C, No):</b> (417) 887-3252	
<b>INSURED</b> Rich Kramer Construction Inc. 789 N Miller  Springfield MO 65802-6620		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Employers Mutual ins Co <b>INSURER B:</b> Midwest Builders Casualty Mutual <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	
		<b>NAIC #</b>	21415
		<b>NAIC #</b>	13126

**COVERAGES**      **CERTIFICATE NUMBER:** CL23121348281      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	6X28656	01/01/2024	01/01/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Pollution Liability \$ 100,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	6X28656	01/01/2024	01/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$	Y	Y	6X28656U	01/01/2024	01/01/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC10000012482024A	01/01/2024	01/01/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	<b>INSTALLATION FLOATER RENTED/LEASED EQUIPMENT</b>			6X28656	01/01/2024	01/01/2025	INSTALLATION 300,000 RENTED/LEASED 250,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Project: New Maintenance Facility. Certificate Holder and Project Owner is additional insured including ongoing & completed operations on a primary and non-contributory basis with respect to General Liability, Auto Liability and Umbrella Liability. Waiver of Subrogation applies. 30 day notice of cancellation applies.

<b>CERTIFICATE HOLDER</b>  Battlefield Fire Protection District 4117 W Second Street  Battlefield MO 65619	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**GENERAL LIABILITY ELITE EXTENSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The COMMERCIAL GENERAL LIABILITY COVERAGE FORM is amended to include the following clarifications and extensions of coverage. The provisions of the Coverage Form apply unless modified by endorsement.

**A. EXPECTED OR INTENDED INJURY**

Section I – Coverage A, Exclusion a. is amended as follows:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of an insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**B. NON-OWNED WATERCRAFT**

Section I – Coverage A, Exclusion g.(2) is amended as follows:

(2) A watercraft you do not own that is:

- (a) Less than 60 feet long; and
- (b) Not being used to carry person(s) or property for a charge;

**C. EXTENDED PROPERTY DAMAGE COVERAGE**

Section I – Coverage A, Exclusions j.(3) and (4) is amended to add the following:

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

SCHEDULE	
Limits Of Insurance	Deductible
\$5,000 Each Occurrence	\$250 Per Claim
\$10,000 Annual Aggregate	

a. The each occurrence limit listed above is the most we will pay for all damages because of "property damage" to property in the care, custody and control of or property loaned to an insured as the result of any one "occurrence", regardless of the number of:

- (1) insureds;
- (2) claims made or "suits" brought;
- (3) persons or organizations making claims or bringing "suits".

The aggregate limit listed above is the most we will pay for all damages because of "property damage" to property in the care custody and control of or property loaned to an insured during the policy period.

Any payment we make for damages because of "property damage" to property in the care, custody and control of or property loaned to an insured will apply against the General Aggregate Limit shown in the declarations.

b. Our obligation to pay damages on your behalf applies only to the amount of damages in excess of the deductible amount listed above. We may pay any part or all of the deductible amount listed above. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and upon notification by us, you will promptly reimburse us for that part of the deductible we paid.

c. If two or more coverages apply under one "occurrence", only the highest per claim deductible applicable to these coverages will apply.

d. Insurance provided by this provision is excess over any other insurance, whether primary, excess, contingent or any other basis. Since insurance provided by this endorsement is excess, we will have no duty to defend any claim or "suit" to which insurance provided by this endorsement applies if any other insurer has a duty to defend such a claim or "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

**D. PROPERTY DAMAGE – ELEVATORS**

Section I – Coverage A.2. Exclusions paragraphs j.(3), j.(4), j.(6) and k. do not apply to use of elevators. This insurance afforded by this provision is excess over any valid and collectible property insurance (including any deductible) available to the insured and Section IV – Commercial General Liability Conditions Paragraph 4. Other Insurance is changed accordingly.

## E. FIRE, LIGHTNING OR EXPLOSION DAMAGE

Except where it is used in the term "hostile fire", the word fire includes fire, lightning or explosion wherever it appears in the Coverage Form.

Under **Section I – Coverage A**, the last paragraph (after the exclusions) is replaced with the following:

Exclusions c. through n. do not apply to damage by fire, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III – Limits of Insurance**.

## F. MEDICAL PAYMENTS

If **Section I – Coverage C. Medical Payments Coverage** is not otherwise excluded from this Coverage Form:

The requirement, in the Insuring Agreement of Coverage C., that expenses must be incurred and reported to us within one year of the accident date is changed to three years.

## G. SUPPLEMENTARY PAYMENTS

**Supplementary Payments – Coverages A and B Paragraphs 1.b. and 1.d.** are replaced by the following:

1.b. Up to \$5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

1.d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

## H. SUBSIDIARIES AS INSURED

**Section II – Who Is An Insured** is amended to add the following:

1.f. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this policy. However, insured does not include any subsidiary that is an insured under any other general liability policy, or would have been an insured under such a policy but for termination of that policy or the exhaustion of that policy's limits of liability.

## I. BLANKET ADDITIONAL INSURED – AS REQUIRED BY CONTRACT

1. **Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) subject to provisions in Paragraph 2. below, (hereinafter referred to as additional insured) when you and such person(s) or organization(s) have agreed in a written contract or written agreement that such person(s) or organization(s) be added as an additional insured on your policy provided that the written contract or agreement is:

- a. Currently in effect or becomes effective during the policy period; and
- b. Executed prior to an "occurrence" or offense to which this insurance would apply.

However, the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and
  - b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured; and
  - c. Applies only if the person or organization is not specifically named as an additional insured under any other provision of, or endorsement added to, **Section II – Who Is An Insured** of this policy.
2. As provided herein, the insurance coverage provided to such additional insureds is limited to:

- a. Any Controlling Interest, but only with respect to their liability arising out of their financial control of you; or premises they own, maintain, or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- b. Any architect, engineer, or surveyor engaged by you but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations.

With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.

- c. Any manager or lessor of a premises leased to you, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
  - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- d. Any state or governmental agency or subdivision or political subdivision, subject to the following:

- (1) This insurance applies only with respect to the following hazards for which any state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

- (a) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or
- (b) The construction, erection or removal of elevators; or
- (c) The ownership, maintenance or use of any elevators covered by this insurance.

- (2) This insurance applies only with respect to operations performed by you or on your behalf for which any state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

This insurance does not apply to:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

- e. Any vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

With respect to the insurance afforded to these vendors, the following additional exclusions apply:

- (1) The insurance afforded any vendor does not apply to:

- (a) "Bodily injury" or "property damage" for which any vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that any vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by any vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as any vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at any vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for any vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of any vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or
- (ii) Such inspections, adjustments, tests or servicing as any vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

f. Any Mortgagee, Assignee Or Receiver, but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

g. Any Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

(1) This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to lease that land; or
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

h. Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

i. Any Owners, Lessees, or Contractors for whom you are performing operations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

(2) "Bodily injury" or "property damage" occurring after:

(a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

j. Any Grantor of Licenses to you, but only with respect to their liability as grantor of licenses to you.

Their status as additional insured under this endorsement ends when:

1. The license granted to you by such person(s) or organization(s) expires; or
2. Your license is terminated or revoked by such person(s) or organization(s) prior to expiration of the license as stipulated by the contract or agreement.

k. Any Grantor of Franchise, but only with respect to their liability as grantor of a franchise to you.

l. Any Co-owner of Insured Premises, but only with respect to their liability as co-owner of any insured premises.

m. Any Concessionaires Trading Under Your Name, but only with respect to their liability as a concessionaire trading under your name.

3. Any insurance provided to any additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or its agents, "employees" or any other representative of the additional insured.

4. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits of Insurance:**

If coverage provided to any additional Insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
- b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

#### J. COVERAGE FOR INJURY TO CO-EMPLOYEES AND/OR YOUR OTHER VOLUNTEER WORKERS

**Section II - Who is an Insured, Paragraph 2.a. (1)** is amended to add the following:

- e. Paragraphs (a), (b), and (c) do not apply to your "employees" or "volunteer workers" with respect to "bodily injury" to a co-"employee" or other "volunteer worker".

Damages owed to an injured co-"employee" or "volunteer worker" will be reduced by any amount paid or available to the injured co-"employee" or "volunteer worker" under any other valid and collectible insurance.

#### K. HEALTH CARE SERVICE PROFESSIONALS AS INSUREDS - INCIDENTAL MALPRACTICE

**Section II - Who is an Insured, Paragraph 2.a. (1) (d)** is amended as follows:

This provision does not apply to Nurses, Emergency Medical Technicians, or Paramedics who provide professional health care services on your behalf.

However this exception does not apply if you are in the business or occupation of providing any such professional services.

#### L. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

**Section II - Who is An Insured, Paragraph 3.a.** is replaced by the following:

**3.a.** Coverage under this provision is afforded until the end of the policy period.

This provision does not apply if newly formed or acquired organizations coverage is excluded either by the provisions of the Coverage Form or by endorsements.

#### M. DAMAGE TO PREMISES RENTED TO YOU

**Section III - Limits of Insurance, Paragraph 6.** is replaced by the following:

Subject to 5.a. above, the Damage To Premises Rented To You Limit, or \$500,000, whichever is higher, is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, smoke or leakage from automatic protection systems, while rented to you or temporarily occupied by you with permission of the owner.

#### N. MEDICAL PAYMENTS - INCREASED LIMITS

**Section III - Limits of Insurance, Paragraph 7.** is replaced by the following:

7. Subject to Paragraph 5. above, \$10,000 is the Medical Expense Limit we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, unless the amount shown on the Declarations of this Coverage Part for Medical Expense Limit states:

- (a) No Coverage; or
- (b) \$1,000; or
- (c) \$5,000; or
- (d) A limit higher than \$10,000.

**O. DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT**

**Section IV – Commercial General Liability Conditions Paragraph 2.** is amended to add the following:

- e. The requirement in Condition 2.a. that you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim, applies only when the "occurrence" or offense is known to:
  - (1) You, if you are an individual or a limited liability company;
  - (2) A partner, if you are a partnership;
  - (3) A member or manager, if you are a limited liability company;
  - (4) An "executive officer" or insurance manager, if you are a corporation; or
  - (5) A trustee, if you are a trust.
- f. The requirement in Condition 2.b. that you must see to it that we receive notice of a claim or "suit" as soon as practicable will not be considered breached unless the breach occurs after such claim or "suit" is known to:
  - (1) You, if you are an individual or a limited liability company;
  - (2) A partner, if you are a partnership;
  - (3) A member or manager, if you are a limited liability company;
  - (4) An "executive officer" or insurance manager, if you are a corporation; or
  - (5) A trustee, if you are a trust.

**P. PRIMARY AND NONCONTRIBUTORY – ADDITIONAL INSURED EXTENSION**

**Section IV – Commercial General Liability Conditions Paragraph 4. Other Insurance** is amended to add the following:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured. However, if the additional insured has been added as an additional insured on other policies, whether primary, excess, contingent or on any other basis, this insurance is excess over any other insurance regardless of the written agreement between you and an additional insured.

**Q. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES**

**Section IV – Commercial General Liability Conditions Paragraph 6. Representations** is amended to add the following:

If you unintentionally fail to disclose any exposures existing at the inception date of your policy, we will not deny coverage under the Coverage Form solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

This provision does not apply to any known injury or damage which is excluded under any other provision of this policy.

**R. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

**Section IV – Commercial General Liability Condition Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of:

- 1. Your ongoing operations; or
- 2. "Your work" included in the "products-completed operations hazard".

However, this waiver applies only when you have agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

- 1. Is in effect or becomes effective during the term of this policy; and
- 2. Was executed prior to loss.

**S. MENTAL ANGUISH**

**Section V – Definition 3.** is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from bodily injury, sickness or disease.

**T. LIBERALIZATION**

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –  
AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION CONTRACT OR  
AGREEMENT INCLUDING COMPLETED OPERATIONS – PRIMARY AND  
NONCONTRIBUTORY**

This endorsement modifies the insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**A. Section II – Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph f. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of:

- a. your ongoing operations for the additional insured; or
- b. "Your work" for the additional insured and included in the "products – completed operations hazard".

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:**

This insurance does not apply to "bodily injury," "property damage" and "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports,

surveys, field orders, change orders or drawings and specifications; or

- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by the insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

**C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**D. The following is added to the Other Insurance Condition and supersedes any provision to the contrary:**

**Primary and Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**E. All other terms and conditions of this policy remain unchanged.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**COMMERCIAL AUTO ELITE EXTENSION**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

The BUSINESS AUTO COVERAGE FORM is amended to include the following clarifications and extensions of coverage. With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**A. TEMPORARY SUBSTITUTE AUTO PHYSICAL DAMAGE**

**Section I – Covered Autos Paragraph C. Certain Trailers, Mobile Equipment, and Temporary Substitute Autos** is amended by adding the following:

If **Physical Damage Coverage** is provided by this coverage form for an "auto" you own, the **Physical Damage Coverages** provided for that owned "auto" are extended to any "auto" you do not own while used with the permission of its owner as a temporary substitute for the covered "auto" you own that is out of service because of breakdown, repair, servicing, "loss" or destruction.

The coverage provided is the same as the coverage provided for the vehicle being replaced.

**B. BLANKET ADDITIONAL INSURED**

The **Who Is An Insured** provision under **Section II – Covered Autos Liability Coverage** is amended to include the following as an "insured":

1. Any person or organization whom you have agreed in a written contract or agreement to name as an additional "insured" under your "auto" Policy to provide "bodily injury" or "property damage" coverage, but only with respects to liability arising out of the use of a covered "auto" you own, hire or borrow and resulting from the acts or omissions by you, any of your "employees" or agents. The insurance afforded to such additional "insured" will not be broader than that which you are required to provide for such additional "insured" and applies only to a written contract executed prior to the "bodily injury" or "property damage" and is still in force at the time of the "accident".
2. With respect to the insurance afforded to the additional "insured" described above, the following is added to **Section – C. Limit Of Insurance Covered Autos Liability Coverage**:

The most we will pay on behalf of the additional "insured" is the amount of insurance:

- (1) Required by the written contract or agreement described above, or

- (2) Available under the applicable Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations; whichever is less.

**C. EMPLOYEES AS INSURED**

The following is added to the **Section II – Covered Autos Liability Coverage, Paragraph A.1. Who Is An Insured** provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

**D. EMPLOYEE HIRED AUTOS**

**1. Changes In Covered Autos Liability Coverage**

The following is added to the **Who Is An Insured** provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

**2. Changes In General Conditions**

Paragraph **5.b.** of the **Other Insurance** in the Business Auto Coverage Form is amended by the addition of the following:

For **Hired Auto Physical Damage Coverage** any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business is deemed to be a covered "auto" you own.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**E. NEWLY FORMED OR ACQUIRED ORGANIZATIONS**

**Section II – Covered Autos Liability Coverage, A.1. Who Is An Insured** is amended by adding the following:

Any organization which you acquire or form after the effective date of this Policy in which you maintain ownership or majority interest. However:

- (1) Coverage under this provision is afforded only up to 180 days after you acquire or form the organization, or to the end of the Policy period, whichever is earlier.

#### F. SUBSIDIARIES AS INSURED

**Section II – Covered Autos Liability Coverage, A.1. Who Is An Insured** is amended by adding the following:

Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of this Policy. However, "insured" does not include any subsidiary that is an "insured" under any other automobile liability Policy or was an "insured" under such a Policy but for termination of that Policy or the exhaustion of the Policy's limits of liability.

#### G. SUPPLEMENTARY PAYMENTS

**Section II – Covered Autos Liability Coverage, A.2.a. Coverage Extensions, Supplementary Payments (2) and (4)** are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

#### H. FELLOW EMPLOYEE COVERAGE

In those jurisdictions where, by law, fellow employees are not entitled to the protection afforded to the employer by workers compensation exclusivity rule, or similar protection. The following provision is added:

Subparagraph 5. of Paragraph B. Exclusions in **Section II – Covered Autos Liability Coverage** does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

#### I. TOWING AND LABOR

**Section III – Physical Damage Coverage, A.2. Towing And Labor** is replaced with the following:

We will pay for **Towing And Labor** costs incurred, subject to the following:

- a. Up to \$100 each time a covered "auto" that is a private passenger type is disabled; or
- b. Up to \$500 each time a covered "auto" other than the private passenger type is disabled.

However, the labor must be performed at the place of disablement.

#### J. LOCKSMITH SERVICES

**Section III – Physical Damage Coverage, A.4. Coverage Extensions** is amended by adding the following:

We will pay up to \$250 per occurrence for necessary locksmith services for keys locked inside

a covered private passenger "auto". The deductible is waived for these services.

#### K. TRANSPORTATION EXPENSES

**Section III – Physical Damage Coverage, A.4. Coverage Extensions Subparagraph a. Transportation Expenses** is replaced by the following:

- (1) We will pay up to \$75 per day to a maximum of \$2,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Cause of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the Policy's expirations, when the covered "auto" is returned to use or we pay for its "loss".
- (2) If the temporary transportation expenses you incur arise from your rental of an "auto" of the private passenger type, the most we will pay is the amount it costs to rent an "auto" of the private passenger type which is of the same like, kind and quality as the stolen covered "auto".

#### L. ELECTRONIC EQUIPMENT COVERAGE ADDED LIMITS

All electronic equipment that reproduces, receives or transmits audio, visual, or data signals in any one "loss" is \$5,000, in addition to the sublimit in Paragraph C.1.b. of the **Limits Of Insurance** provision under **Section III – Physical Damage Coverage**.

#### M. HIRED AUTO PHYSICAL DAMAGE

**Section III – Physical Damage Coverage, A.4. Coverage Extensions** is amended by adding the following: If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss, or Collision Coverage is provided for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you lease, hire, rent or borrow is deemed to be a covered "auto" you own, subject to the following limit and deductible:

- (1) The most we will pay for loss to any leased, hired, rented or borrowed "auto" is the lesser of up to a limit of \$100,000, Actual Cash Value or Cost of Repair, minus the deductible.
- (2) The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage.
- (3) Subject to the above limit and deductible provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will pay up to \$1,000, in addition to the limit above, for **Loss Of Use** of a hired auto to a leasing or rental concern for a monetary loss

sustained, provided it results from an "accident" for which you are legally liable.

However, coverage does not apply to any "auto" leased, hired, rented or borrowed in your Motor Carrier Operations and any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

#### **N. AUTO LOAN/LEASE GAP COVERAGE**

**Section III - Physical Damage Coverage Paragraph A.4. Coverage Extensions** is amended by the addition of the following:

Autos of the private passenger, light or medium trucks that are loaned or leased for a period of six months or longer and which have been provided Physical Damage Coverage is a covered "auto" under this Policy for which a premium charge has been made for Comprehensive, Specified Cause of Loss, or Collision Coverage. We will pay any unpaid amount due up to a limit of \$10,000 on the lease or loan for a covered "auto", including up to a maximum of \$500 for early termination fees or penalties, on the lease or loan for a covered "auto", less:

1. The amount paid under the Policy's **Physical Damage Coverage**; and
2. Any:
  - a. Overdue or any deferred lease/loan payments at the time of the "loss";
  - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - c. Security deposits not returned by the lessor;
  - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
  - e. Carry-over balances from previous loans or leases.

The insurance provided by this Auto Loan/Lease Gap Coverage is excess over any other collectible insurance including but not limited to any coverage provided by or purchased from the lessor or any financial institution.

#### **O. PERSONAL PROPERTY OF OTHERS**

**Section III - Physical Damage Coverage, A.4. Coverage Extensions** is amended by adding the following:

We will pay up to \$500 for loss to Personal Property Of Others in or on your covered "auto" in the event of a covered "auto" loss.

No deductibles apply to this coverage.

#### **P. PERSONAL EFFECTS COVERAGE**

**Section III - Physical Damage Coverage, A.4. Coverage Extensions** is amended by adding the following:

We will pay up to \$500 for "loss" to your Personal Effects not otherwise covered in the Policy or, if you

are an individual, the Personal Effects of a family member, that is in the covered auto at the time of the "loss".

For the purposes of this extension Personal Effects means tangible property that is worn or carried by an insured including portable audio, visual, or electronic devices. Personal Effects does not include tools, jewelry, guns, money and securities, or musical instruments.

#### **Q. EXTRA EXPENSE FOR STOLEN AUTO**

**Section III - Physical Damage Coverage, A.4. Coverage Extensions** is amended by adding the following:

We will pay up to \$1,000 for the expense incurred returning a stolen covered "auto" to you because of the total theft of such covered "auto". Coverage applies only to those covered "autos" for which you carry Comprehensive or Specified Causes Of Loss Coverage.

#### **R. RENTAL REIMBURSEMENT EXPENSES**

**Section III - Physical Damage Coverage, A.4. Coverage Extensions** is amended by adding the following:

1. This coverage applies only to a covered "auto" for which **Physical Damage Coverage** is provided on this Policy.
2. We will pay for **Rental Reimbursement Expenses** incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.
3. We will pay only for those expenses incurred during the Policy period beginning 24 hours after the "loss" and ending, regardless of the Policy's expiration, with the lesser of the following number of days
  - a. The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you; or
  - b. 30 days.
4. Our payment is limited to the lesser of the following amounts:
  - a. Necessary and actual expenses incurred; or
  - b. \$75 per day, subject to a \$2,250 limit.
5. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
6. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your **Rental Reimbursement Expenses** which is not already provided for under the **Physical Damage - Transportation Expense**

Coverage Extension included in this endorsement.

7. Coverage provided by this extension is excess over any other collectible insurance and/or endorsement to this Policy.

#### S. VEHICLE WRAPS COVERAGE

**Section III – Physical Damage Coverage, A.4. Coverage Extensions** is amended by adding the following:

1. This coverage applies only to a covered "auto" for which **Physical Damage Coverage** is provided on this Policy.
2. Vehicle wraps that are damaged are covered at the lessor of replacement cost or the original purchase cost of the vehicle wrap, whichever is less, up to \$2,000.

This coverage does not apply to wear and tear.

#### T. AIRBAG COVERAGE

**Section III – Physical Damage Coverage, B.3.a. Exclusions** is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this Policy, the exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

#### U. NEW VEHICLE REPLACEMENT COST

The following is added to Paragraph C. **Limit Of Insurance of Section III – Physical Damage Coverage**

In the event of a total "loss" to a covered "auto" you own of the private passenger type or vehicle having a gross vehicle weight of 20,000 pounds or less, to which this coverage applies, we will pay to replace such covered "auto", minus any applicable deductible shown in the Declarations, at your option:

- a. The verifiable new vehicle purchase price you paid for your damaged vehicle, not including any insurance or warranties.
- b. The purchase price, as negotiated by us, of a new vehicle of the same make, model, and equipment, or most similar model available, not including any furnishings, parts, or equipment not installed by the manufacturer or their dealership.
- c. The market value of your damaged vehicle, not including any furnishings, parts, or equipment not installed by the manufacturer or their dealership.

We will not pay for initiation or set up costs associated with a loans or leases.

For the purposes of this coverage extension a new covered auto is defined as an "auto" of which you are the original owner that has not been previously titled which you purchased less than 180 days prior to the date of loss.

#### V. LOSS TO TWO OR MORE COVERED AUTOS FROM ONE ACCIDENT

**Section III – Physical Damage Coverage, D. Deductible** Subparagraph 2. is replaced by the following:

2. Regardless of the number of covered "autos" damaged or stolen the maximum deductible applicable for all "loss" in any one event caused by:

- a. Theft or Mischief or Vandalism; or
- b. All Perils
- c. Collision

Will be equal to two times the highest deductible applicable to any one covered "auto" on the Policy for Comprehensive, Specified Causes of Loss or Collision Coverage. The application of the highest deductible used to calculate the maximum deductible will be made regardless of which covered "autos" were damaged or stolen in the "loss".

#### W. FULL GLASS COVERAGE

**Section III – Physical Damage Coverage, D. Deductible** is amended by the addition of the following:

If the Comprehensive Coverage applies to the covered "autos", no Comprehensive Coverage Deductible applies to the cost of repairing or replacing damaged glass on the covered "auto(s)".

#### X. PHYSICAL DAMAGE DEDUCTIBLE – VEHICLE TRACKING SYSTEM

**Section III – Physical Damage D. Deductible** is amended by adding the following:

Comprehensive Coverage Deductible shown in the Declaration will be reduced by 50% for any "loss" caused by theft of the vehicle when equipped with a vehicle tracking device such as a radio tracking device or a global positioning device and that device was the method of recovery of the vehicle.

#### Y. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS

**Section IV – Business Auto Conditions, A.2. Duties In The Event Of Accident, Claim, Suit Or Loss** is amended by adding the following:

Your obligation to notify us promptly of an "accident", claim, "suit" or "loss" is satisfied if you send us the required notice as soon as practicable after your Insurance Administrator or anyone else designated by you to be responsible for insurance matters is notified, or in any manner made aware, of an "accident", claim, "suit" or "loss".

#### Z. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY

Subparagraph 5. of Paragraph A. **Loss Conditions of Section IV – Business Auto Conditions** is deleted in its entirety and replaced with the following.

**Transfer Of Rights Of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. However, we waive any right of recovery we may have against any person, or organization with whom you have a

written contract, agreement or permit executed prior to the "loss" that requires a waiver of recovery for payments made for damages arising out of your operations done under contract with such person or organization.

**AA. PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

**Section IV – Business Auto Conditions, B. General Conditions, 5. Other Insurance c.** is replaced by the following:

**This Coverage Form's Covered Autos Liability Coverage** is primary to and will not seek contribution from any other insurance available to an "insured" under your Policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

However, coverage does not apply to any "auto" leased, hired, rented or borrowed in your Motor Carrier Operations and any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**AB. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES**

**Section IV – Business Auto Conditions, B.2. Concealment, Misrepresentation, Or Fraud** is amended by adding the following:

If you unintentionally fail to disclose any exposures existing at the inception date of this Policy, we will not deny coverage under this Coverage Form solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**AC. MENTAL ANGUISH**

**Section V – Definitions, C.** is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from bodily injury, sickness or disease.

**AD. LIBERALIZATION**

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**UMBRELLA LIABILITY AMENDMENT – FOLLOWING FORM**

This endorsement modifies insurance provided under the following:

**COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM**

This endorsement does not apply to liability arising out of the following unless coverage is provided by "underlying insurance". Coverage provided by this endorsement will not be broader than such "underlying insurance".

**A. NEWLY ACQUIRED INTERESTS**

In paragraph 1.c.(1) of **SECTION II – WHO IS AN INSURED**, 90th day is changed to 180th day.

**B. DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT**

Paragraph 3. of **SECTION IV – CONDITIONS** is amended by the following provision:

1. The requirement in **Condition 3.a.** that you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim, applies only when the "occurrence" or offense is known to:
  - a. You, if you are an individual or a limited liability company;
  - b. A partner, if you are a partnership;
  - c. A manager, if you are a limited liability company;
  - d. An "executive officer" or insurance manager, if you are a corporation; or
  - e. A trustee, if you are a trust.
2. The requirement in **Condition 3.b.** that you must see to it that we receive notice of a claim or "suit" as soon as practicable will not be considered breached unless the breach occurs after such claim or "suit" is known to:
  - a. You, if you are an individual or a limited liability company;
  - b. A partner, if you are a partnership;
  - c. A manager, if you are a limited liability company;

d. An "executive officer" or insurance manager, if you are a corporation; or

e. A trustee, if you are a trust.

**C. UNINTENTIONAL FAILURE TO DISCLOSE EXPOSURES**

Paragraph 7. – **REPRESENTATIONS OR FRAUD OF SECTION IV – CONDITIONS** is replaced as follows:

**7. REPRESENTATIONS OR FRAUD**

By accepting this policy, you agree:

- a. The statements in the Application are accurate and complete;
- b. The information in "underlying insurance" is accurate and complete;
- c. Those statements are based upon representations you made to us; and
- d. We have issued this policy in reliance upon your representations.
- e. This policy may be voided in case of fraud or material misrepresentation by you.

If you unintentionally fail to disclose any exposures existing at the inception date of your policy, we will not deny coverage under this Coverage Part solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

This provision does not apply to any known injury or damage which is excluded under any other provision of this policy.