



**Vestavia Hills
City Council Agenda
October 13, 2025
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation -
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
 - 1 Announcement of an upcoming vacancy on the Vestavia Hills Library Board. Applications will open on October 14, 2025. The deadline for application is Monday, November 10, 2025, at 5:00 PM local time. Applications are taken through "online services" on the City's website.
 - 2 Announcement of an upcoming vacancy on the Vestavia Hills Parks and Recreation Board. Applications will open on October 14, 2025. The deadline for application is Monday, November 10, 2025, at 5:00 PM local time. Applications are taken through "online services" on the City's website.
7. City Manager's Report
8. Councilors' Reports
9. Approval Of Minutes - September 22, 2025 regular meeting minutes, September 29, 2025 special meeting minutes and September 29, 2025 special work session minutes
10. Proclamation - October 2025 as Down Syndrome Awareness Month

Old Business (Public Hearing)

11. Public Hearing - Ordinance Number 3296 - An Ordinance Accepting a Bid for the City of Vestavia Hills Highway 31 Gateway Sign and Authorizing the Mayor and City Manager to execute any and all agreements for said project
12. Public Hearing - Ordinance Number 3290 - Pre-zoning - 2560 Rocky Ridge Road; Rezone from Jefferson County C-P (commercial preferred) to Vestavia Hills R-9 (planned residential) for construction of eight (8) single family residences; Hartbrook Development, owner; Brandon Hays, representing
13. Public Hearing - Ordinance Number 3291 - Annexation - 90-day final - 2560 Rocky Ridge Road; Hartbrook Development, Brandon Hays, representing

New Business

14. Resolution 5598 - A Resolution to declare certain personal property as surplus and authorize the City Manager to sell/dispose of said property
15. Ordinance Number 3298 - An Ordinance Accepting a Proposal for Architectural Services to Design a Pool Heater and Renovations/Additions to the Alberto Zaragoza Fire Station #4 and Authorizing the Mayor and City Manager to execute any and all agreements for these design services

New Business Requesting Unanimous Consent (Public Hearing)

16. Public Hearing - Ordinance Number 3297 - An Ordinance Accepting a SAFER (Staffing for Adequate Fire and Emergency Response) Grant from FEMA that will Fund the Employment of 12 Firefighters and Authorizing the Mayor and City Manager to Execute Any and All Agreements for the Grant Acceptance

First Reading (No Action To Be Taken At This Meeting)

17. Public Hearing - Resolution Number 5585 - A Resolution vacating a portion of an alley adjacent to 929 Oaklawn Drive and 920 Granbury Road; Chris Burkhalter, owner (*public hearing scheduled for October 27, 2025; 30 day notice given pursuant to Alabama law*)
18. Resolution Number 5586 - A Resolution determining the value of right-of-way vacated by Resolution Number 5585 (*public hearing scheduled for October 27, 2025; notice given pursuant to Alabama law*)
19. Public Hearing - Ordinance Number 3299 - An Ordinance accepting a grant from the Alabama Department of Economic and Community Affairs (ADECA) through the Federal Highway Recreational Trails Program for trail improvements at Altadena Valley Park and Authorizing the Mayor and City Manager to Execute any and all documents necessary to secure said grant.
20. Citizens Comments
21. Time Of Adjournment

PUBLIC HEARING PROCEDURES

The following procedures shall be followed for every public hearing of the City Council:

- All comments shall be limited to **3 minutes**. A countdown clock will be provided on the video screens.
- Do not duplicate comments made by previous speakers. For example, if traffic is mentioned as an issue, do not readdress that issue.
- All comments shall be directed to the Mayor and/or presiding officer. Do not address the audience or the applicant.
- Each speaker shall identify himself, including full name and address.

SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS

If you prefer not to attend a City Council meeting or work session in person, you may participate remotely:

- **Videoconference:** To participate by videoconference, you may access the meeting via Zoom at <https://us02web.zoom.us/j/5539517181>. When the Zoom.us window opens in your browser, click "Allow" to be placed in a virtual "waiting room." The host will open the meeting and allow all participants to join the meeting at that time. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, activate the "video" feature and unmute yourself by toggling the mute button. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then you may address the Council. Some useful Zoom functions include: microphone Mute/Unmute; Start/Stop Video; and View Participants – opens a pop-out screen that includes the "Raise Hand" icon that you may use to raise a virtual hand.
- **Teleconference:** To participate by telephone, dial 312.626.6799 and enter the meeting ID: 5539517181. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, unmute yourself by pressing *6 on your keypad. Then state your name and wait for the Mayor to recognize you. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then address the Council.

Meetings may be recorded. By participating in the meeting, you are consenting to be recorded.

"Zoom-bombing." Zoom-bombing is a cyber-crime and is punishable by law. In the event of an attendee intruding into any City of Vestavia Hills Zoom meeting, the online broadcast will be terminated immediately. Council and/or board members may be readmitted but online attendees will not. Although Zoom-bombing is not a frequent occurrence, those wishing to make public comment should attend the meeting in person.



**Vestavia Hills
City Council Minutes
September 22, 2025
6:00 PM**

1. Call to Order

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the general public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order and the City Clerk called the roll with the following:

2. Roll Call

Roll call was as follows:

MEMBERS PRESENT: Mayor Ashley Curry, Mayor Pro-Tem Rusty Weaver, City Councilors Kimberly Cook, Paul Head*, George Pierce

MEMBERS ABSENT: None.

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager; Patrick H. Boone, City Attorney; Cinnamon McCulley, Asst. City Manager; Rebecca Leavings, City Clerk; Shane Ware, Police Chief; Melvin Turner, Finance Director; Zachary Clifton, Asst. Finance Director; Lori Beth Kearley, Public Works Director; Marvin Green, Fire Chief.=

3. Invocation - Huey Davis, Vestavia Hills Chaplain

4. Pledge Of Allegiance

5. Approval Of The Agenda

MOTION: Approve the agenda as presented. Motion by: Kimberly Cook. Seconded by: Rusty Weaver.

Mr. Weaver stated he would like to amend the agenda to omit Item 15 - Ordinance Number 3296. He suggested delaying consideration of said item until it can be discussed at a work session. He suggested having a work session on Monday, September 29, 2025 at 5 PM to discuss the proposed signage and allow for the public to hear the details instead of misinformation given on social media.

The Mayor opened the floor for a motion to amend:

MOTION: Amend the agenda to delay consideration of Item 15, Ordinance Number 3296. Motion by: Kimberly Cook. Seconded by: Rusty Weaver.

There being no further discussion, the Mayor called for the question on the amendment.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.

No: None. Abstain: None. Motion passed.

There being no further discussion, the Mayor called for the question of the amended agenda.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.

No: None. Abstain: None. Motion passed.

Mr. Pierce stated in his time on Council, that these items have been discussed for weeks and no one pays attention or participates in these discussions. Then social media will blow up an item that has been extensively discussed in public meetings by the City Council. He encouraged everyone to participate in the meetings and work sessions and stay informed on what is being discussed.

6. Announcements, Candidates and Guest Recognition

- Mr. Pierce welcomed Library Board member Christopher Gerety and Library Foundation board member, Ann Hamiter.
- Mr. Pierce also welcomed Chamber Board member Kevin Wade to the meeting.
- Mayor Curry announced that the 75th anniversary celebration will be held on October 2, in conjunction with the annual Night Out celebration. He invited everyone to attend.
- Mr. Head announced that there will be an upcoming vacancy for the Parks and Recreation Board as well as the Library Board. The Council will begin accepting applications on Tuesday, October 14, 2025. Deadline for application is Monday, November 10, 2025, at 5 PM. Interviews will follow, and the new appointments will be announced at the first meeting in December.
- The following candidates introduced themselves:
 - Mike Verchier, Council, Place Number 3
 - Brian DeMarco, Council, Place Number 3
- Mr. Pierce invited David Harwell to give an update on his brother's, Donald Harwell's medical condition.

7. City Manager's Report

- Mr. Downes stated that the City has received another grant for the Altadena Valley Park trail system to increase the trail by over 2,000 linear feet, valued at \$137,508. He commended Melissa Hipp, from his office, on her extensive work in finding grant money, going through immense amounts of information and successfully obtaining these grants. This is an 80/20 federal match grant.
- Mr. Downes stated that the Council approved Doster Construction as the construction manager for upcoming projects, and they have established a schedule for the pool heater, being the first project, and a hopeful completion prior to next spring. Spire

is covering 100% of the cost of installing the gas line for the heater. The Liberty Park fire station renovations are scheduled to be completed in early 2027.

8. Councilors' Reports

- Mrs. Cook echoed some of Mr. Pierce's comments regarding the efforts the City takes to ensure the public is fully aware of the actions of this Council. For instance, since the last meeting, she requested that the design drawings be added to the agenda packet for anyone to see every detail of what was being proposed at the entrance gateway. She encouraged everyone to stay involved, and, if there are questions, to contact staff or a Council member, because staff are great at responding.
- Mr. Pierce stated that he attended the Chamber Board meeting where plans are being made for Trick or Treat, Haunt the Hills, beginning at 4:30 at Wald Park on Friday, October 17, 2025.

9. Financial Reports - Zachary Clifton, Deputy Finance Director

The financial statements from the month ending August were presented by Zachary Clifton, Deputy Finance Director. Mr. Clifton read and explained the balances.

Mrs. Cook stated that the financial transparency portal on the City's website is a great snapshot for citizens to review the state of City finances and economic activity.

Mr. Pierce asked about areas of concern. Mr. Clifton stated that they are trending well with the projected budget.

10. Approval Of Minutes — September 2, 2025, special meeting minutes; September 2, 2025, special work session minutes and September 8, 2025, regular meeting minutes

The Mayor announced that the minutes of the September 2, 2025 special meeting, the September 2, 2025 special work session and the September 8, 2025 regular meeting are being presented for approval. He opened the floor for a motion.

MOTION: Approve the minutes as presented. Motion By: Kimberly Cook. Seconded By: Rusty Weaver.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.

No: None. Abstain: None. Motion passed.

Old Business (Public Hearing)

11. Public Hearing - Ordinance Number 3286 - Annexation - 90-Day Final - 2610 Stony Branch Road; William Green, owner

MOTION: Approve Ordinance Number 3286 as presented. Motion by: Rusty Weaver. Seconded by: George Pierce.

Mr. Pierce stated that this property was annexed 90 days ago. The property owners worked with the fire department to expand the turnaround driveway for apparatus access. The driveway improvements have been completed. He indicated that, previously, there was discussion that one property owner didn't pay ad valorem taxes but the other does pay ad valorem taxes.

The Mayor opened the floor for a public hearing. There being no one present to address the Council on this issue, the Mayor closed the public hearing and called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head.

No: George Pierce. Abstain: None. Motion passed.

12. Public Hearing - Ordinance Number 3287 - Annexation - 90-Day Final - 2620 Stony Branch Road; William Paul, owner

MOTION: Approve Ordinance Number 3287 as presented. Motion by: Rusty Weaver. Seconded by: George Pierce.

The Mayor opened the floor for a public hearing. There being no one present to address the Council on this issue, the Mayor closed the public hearing and called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.

No: None. Abstain: None. Motion passed.

13. Public Hearing - Ordinance Number 3288 - Rezoning - 2610 and 2620 Stony Branch Road; Rezoning from Jefferson County E-1 to Vestavia Hills E-2, compatible zoning for annexation; William Green and William Paul, owners

MOTION: Approve Ordinance Number 3288 as presented. Motion by: Rusty Weaver. Seconded by: George Pierce.

Mr. Weaver stated that this request is the compatible zoning for the properties just annexed and is in keeping with the Code. He stated that the Commission unanimously recommends approval.

The Mayor opened the floor for a public hearing. There being no one present to address the Council on this issue, the Mayor closed the public hearing and called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul

Head, George Pierce.

No: None. Abstain: None. Motion passed.

14. Public Hearing - Ordinance Number 3289 - Rezoning - 3112 Sunview Drive; Rezoning from Vestavia Hills R-5 to Vestavia Hills R-4 for an existing home with an approved front setback of 25 feet; Mary Lu Roberts, owner

MOTION: Approve Ordinance Number 3289 as presented. Motion by: Kimberly Cook. Seconded by: Rusty Weaver.

Mr. Weaver stated that this request was considered by the Planning and Zoning Commission for a single-family residential zoning, and a setback adjustment to 25' in lieu of the required 40' to accommodate the home that has existed on the property for decades.

The Mayor opened the floor for a public hearing. There being no one present to address the Council on this issue, the Mayor closed the public hearing and called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.

No: None. Abstain: None. Motion passed.

15. Public Hearing - Ordinance Number 3296 - An Ordinance Accepting a Bid for the City of Vestavia Hills Highway 31 Gateway Sign and Authorizing the Mayor and City Manager to execute any and all agreements for said project

This item was postponed until it can be discussed at the work session on September 29, 2025.

New Business

16. Resolution Number 5589 - A Resolution declaring certain personal property as surplus and authorizing the City Manager to sell/dispos of said property

MOTION: Approve Resolution Number 5589 as presented. Motion by: Rusty Weaver. Seconded by: George Pierce.

Mr. Downes stated that these items are no longer needed and will be replaced by new equipment, vehicles and rifles from the FY26 budget.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.

No: None. Abstain: None. Motion passed.

17. Resolution Number 5590 - A Resolution appointing a member to the Vestavia Hills Parks and Recreation Board to fulfill an unexpired term

MOTION: Approve Resolution Number 5590 as presented. Motion by: Kimberly Cook. Seconded by: Rusty Weaver.

Mr. Head stated that this will appoint a member to replace Mr. Palmore who moved out of state. Mitch Bevill, who has previously served on the Board, has agreed to serve the two remaining years of Mr. Palmore's appointment.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.

No: None. Abstain: None. Motion passed.

18. Resolution Number 5591 - A Resolution Accepting Terms For Financing Vehicles And/Or Equipment for FY 2026

MOTION: Approve Resolution Number 5591 as presented. Motion by: Rusty Weaver. Seconded by: George Pierce.

Mr. Downes stated that this names the bank to finance certain vehicles and equipment that will be purchased in the FY26 budget. Out of the nine responses that were solicited by the Finance Department, Trustmark Bank was found to have the lowest percentage on interest rate. Therefore, he recommends Trustmark Bank.

The Mayor opened the floor for a public hearing. There being no one present to address the Council on this issue, the Mayor closed the public hearing and called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.

No: None. Abstain: None. Motion passed.

New Business Requesting Unanimous Consent (Public Hearing)

First Reading (No Action To Be Taken At This Meeting)

19. Public Hearing - Ordinance Number 3290 - Pre-zoning - 2560 Rocky Ridge Road; Rezone from Jefferson County C-P (commercial preferred) to Vestavia Hills R-9 (planned residential) for construction of eight (8) single family residences; Hartbrook Development, owner; Brandon Hays, representing

20. Public Hearing - Ordinance Number 3291 - Annexation - 90-day final - 2560 Rocky Ridge Road; Hartbrook Development, Brandon Hays, representing

21. Public Hearing - Resolution Number 5585 - A Resolution vacating a portion of an alley adjacent to 929 Oaklawn Drive and 920 Granbury Road; Chris Burkhalter, owner (*public hearing scheduled for October 27, 2025; 30 day notice given pursuant to Alabama law*)

22. Resolution Number 5586 - A Resolution determining the value of right-of-way vacated by Resolution Number 5585 (*public hearing scheduled for October 27, 2025; notice given pursuant to Alabama law*)

23. Citizens Comments

- None.

24. Time Of Adjournment

There being no further business, Mr. Weaver made a motion to adjourn. The Mayor adjourned the meeting at 6:40 PM.

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk



**Vestavia Hills
City Council Minutes
September 29, 2025
4:30 PM**

1. Call to Order

The City Council of Vestavia Hills met in special session on this date at 4:30 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order and the City Clerk called the roll with the following:

2. Roll Call

Roll call was as follows:

MEMBERS PRESENT: Mayor Ashley Curry, Mayor Pro-Tem Rusty Weaver, City Councilors Kimberly Cook, Paul Head, and George Pierce

MEMBERS ABSENT: None.

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager; Patrick H. Boone, City Attorney; Cinnamon McCulley, Asst. City Manager; Rebecca Leavings, City Clerk; Shane Ware, Police Chief; Lori Beth Kearley, Public Works Director; Christopher Brady, City Engineer; Marvin Green, Fire Chief; Umang Patel, Court Director*

3. Invocation - Butch Williams, Vestavia Hills Chaplain

4. Pledge of Allegiance

5. Approval of the Agenda

The Mayor opened the floor for a motion to approve the agenda as presented.

MOTION: Approve the agenda as presented. Motion by: Rusty Weaver. Seconded by: George Pierce.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.

No: None. Abstain: None. Motion passed.

Canvassing of Votes from September 23, 2025 Runoff Election

6. Resolution Number 5597 - A Resolution to canvass the votes from the September 23, 2025 municipal runoff election

MOTION: Approve Resolution Number 5597 as presented. Motion by: Kimberly Cook. Seconded by: Rusty Weaver.

Mr. Patel, Election Manager, explained the results. He stated that Brian Demarco received 1,586 total votes and Michael Vercher received 2,006 total votes. Michael Vercher received a majority of the votes cast and is, therefore, declared as the winner.

Mrs. Leavings, City Clerk, noted that there were no provisional votes cast that day. This enabled the Council to canvass the votes earlier than Tuesday at noon. Also, there is no requirement to amend the resolution as the vote totals were the final tally.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.
No: None. Abstain: None. Motion passed.

7. Certificate of Election - Council, Place Number 3

MOTION: Approve the Certificate of Election for Michael A. Vercher, Council Member, Place Number 3. Motion By: Kimberly Cook. Seconded By: Rusty Weaver.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce.
No: None. Abstain: None. Motion passed.

Adjournment

8. Time of Adjournment

There being no further business, Mr. Weaver made a motion to adjourn. The Mayor adjourned the meeting at 4:35.

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk



Vestavia Hills
City Council Work Session Minutes
September 29, 2025
5:00 PM

1. Call to Order

The City Council of Vestavia Hills met in special work session on this date at 5:00 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the general public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order and the City Clerk called the roll with the following:

2. Roll Call

Roll call was as follows:

MEMBERS PRESENT: Mayor Ashley Curry, Mayor Pro-Tem Rusty Weaver, City Councilor Kimberly Cook, City Councilor Paul Head, City Councilor George Pierce

MEMBERS ABSENT: None.

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager; Patrick H. Boone, City Attorney; Cinnamon McCulley, Asst. City Manager; Rebecca Leavings, City Clerk; Shane Ware, Police Chief; Lori Beth Kearley, Public Works Director; Christopher Brady, City Engineer; Marvin Green, Fire Chief; Umang Patel, Court Director*

3. Announcements

Mr. Downes opened the work session with an important announcement. One of the Council's strategic plans was for renovations and an addition to the Liberty Park Fire Station. The Fire Department has just been awarded a SAFER grant in the amount of \$1,576,399 for a team of 12 firefighters at that station. He explained that this is a 75/25 grant for new firefighters' salaries and benefits which is paid out over a number of years, on a decreasing basis. This was one of only two grants awarded to any entity in Alabama. The City will need to accept this grant and secure the matching funds within a very short time limit. Because of this time constraint and to allow time for the new personnel to be hired, the Council will be asked to to commit the matching 25 percent, by unanimous consent, at the next regular meeting.

Mrs. Cook applauded the Fire Department for their good work in writing and obtaining this grant.

Proposed Southern Gateway Improvement Project Discussion

Mr. Downes gave a detailed background on the decision to pursue this project to improve the southern gateway of the City on Highway 31. He gave the timeline and explained each aspect of the project, which included a backfilled wall to allow for future development on the adjacent property, improved drainage structures around the entire gateway area to alleviate street flooding, improved landscaping, and new signage. The retaining wall will have a backlit welcome sign on one side, and there will be a brand-consistent breakaway sign on the other side of the highway. The existing temple structure will have some upgrades, to include cleaning, new lettering, and landscaping.

Lori Beth Kearley, Public Services Director, explained the current deteriorated drainage structures in the area and the improvements proposed by this project, including replacement of broken concrete flumes full of sediment. She explained that these broken flumes are impeding the flow of water. During the engineering inspection, engineers identified some problems with ALDOT drainage structures, that ALDOT has committed to address. The project design includes new stormwater facilities, both in front of and behind the proposed wall sign. This project is prompting ALDOT and Jefferson County to complete some additional infrastructure projects at the intersection to allow for better accessibility and storm water drainage.

Mr. Downes concluded his presentation by reiterating that the entire project was prompted by public input, conceived by citizens at the 2023 planning charrette and developed by the Council in strategic planning and budget hearings, a process that spanned several years. The project alleviates stormwater drainage issues, and the purchase and demolition of an unsafe hotel increased public safety. Staff overcame many obstacles, including negotiations with land owners to donate, at no cost to the city, the right of way needed for the large wall sign. Staff obtained necessary approvals from ALDOT, overcoming tight restrictions with creative solutions. The project increases the value of the surrounding commercial properties, and elevates potential uses of this well-positioned commercial land which will bring future economic benefit to the city.

In addition, this project has been discussed in public meetings, including all the engineering design specifications that were included in the bid package, and have been made available for public inspection prior to the bid process starting and prior to its consideration at the last regular Council meeting. The bid process is now complete, and multiple bids resulted in the project coming in under the estimated budget. The only thing left to commence construction is for the Council to approve the low bid.

Mr. Pierce stated that it has been said that the current Council should hold off voting on this until the new Council is seated. Mr. Downes answered that the bid is good for a couple of months, but pointed out that this project has been widely discussed and will serve as a catalyst for further development and increased economic activity in that part of town.

Mrs. Cook stated that city staff have put a lot of good work into this planning effort, over multiple years, and it is important for the public to understand that this is a thoughtful, well put-together project that will further important economic goals of the City, including improving stormwater drainage in this flood-prone area.

Duane Pritchett, Environmental Design Studio, explained the wall and the need for its size to allow future development on the adjacent site.

Mrs. Cook asked why the letters could not extend above the wall as was depicted in some of the conceptual idea illustrations from the charrette. Mr. Pritchett explained letters placed above the wall required an attractive background, and that could not be controlled in this setting. He pointed out that, at night, LED back lighting would be a very attractive accent for the lettering. Back-lighting increases the visibility of the sign, which is a challenge given the placement of the sign parallel to the highway. Mrs. Cook stated she talked to one of the Design Review Board's professional landscape architects, and he agreed the plans were good. One of the Design Review Board's architects said the wall design was good, and would make a nice impact on people entering the city.

Mr. Pierce stated that he sees this as an economic development aid in that there are not many places the City can erect this type of sign.

The Mayor stated that, as a 40-year resident on that side of town, he feels that this is needed, especially if it fuels development in this area.

Charles Farrell, 1315 Malibu Place, stated that the deteriorating flumes in that area are in the state of right of way. Mr. Downes explained that the City is under a maintenance agreement with ALDOT that was made when the temple improvements were installed. The City is responsible for maintaining the temple area. Mr. Farrell asked about the stormwater improvements. Mrs. Kearley explained the function of the infrastructure that will primarily use underground piping.

Celia Anthony, resident, stated that the drawings showed there would be a new miniature temple, and asked about the location and whether the two temples at both ends of Highway 31 would mirror each other. Mr. Downes explained that the south temple replica is an older project, and will be enhanced with this project. It will be washed, re-lettered, and re-landscaped. Mr. Downes stated that the temple structure itself will be unchanged, but enhanced, and the wall sign is placed north of it along the highway.

Jackie Alexander, 816 Vestavia Villa Court, said that she thinks the project is a great idea, but when she wants to go somewhere the flooding is so bad she has to consult the weather before going. She stated she feels that the real flooding is not being addressed by this project.

Adjournment

4. Adjournment

There being no further business, Mr. Weaver made a motion to adjourn. The Mayor adjourned the meeting at 6:05 PM.

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk

WHEREAS, Down syndrome is the most frequently occurring chromosomal disorder and is the leading cause of intellectual and developmental delay in the United States; and

WHEREAS, approximately one in every 700 children are born with Down syndrome, representing an estimated 6,000 births per year in the United States with approximately 85 of those annual births occurring here in Alabama; and

WHEREAS, possessing a wide range of abilities, people with Down syndrome are active participants in educational, occupational, social, and recreational circles of our communities; and

WHEREAS, yet despite significant increases in lifespan and intellectual opportunities over the past decade, there is still much work to be done regarding the rights to equality, inclusion, education, medical care, research, employment and support for people with Down syndrome; and

WHEREAS, all citizens are encouraged to work together to celebrate the lives of individuals with Down syndrome, and remember to appreciate and regard every individual with dignity as a valued member of the community; and

WHEREAS, through public awareness, the City of Vestavia Hills supports the initiatives of organizations working to ensure people with Down syndrome have adequate services, are valued by society, and can lead fulfilling and productive lives in our community.

NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim October 2025 as

DOWN SYNDROME AWARENESS MONTH

in the City of Vestavia Hills in support of individuals with Down syndrome, as well as their families, advocates, researchers, and medical professionals. I encourage all citizens to work together to promote respect and inclusion of individuals with Down syndrome and to celebrate their accomplishments and contributions.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 13th day of October 2025.

Ashley C. Curry, Mayor



**CITY OF VESTAVIA HILLS
PUBLIC SERVICES
INTER-DEPARTMENT MEMO**

October 13, 2025

To: Jeff Downes, City Manager

From: Ethan Fisher, City Engineer

Cc: Lori Beth Kearley, Public Services Director
Christopher Brady, City Engineer

RE: Public Hearing - Ordinance Number 3296 - An Ordinance Accepting a Bid for the City of Vestavia Hills Highway 31 Gateway Sign and Authorizing the Mayor and City Manager to execute any and all agreements for said project

Background:

The Highway 31 Gateway project is part of Strategic Plan Priority Area 1. This project is a step in the phased beautification of Highway 31. Improvements are planned for both sides of Highway 31 at the Columbiana Road Intersection and I-65 off-ramp. The improvements include a large Vestavia Hills Gateway Sign, landscaping upgrades, and smaller monument sign. The civil plans may be accessed by clicking the following link: <https://www.dropbox.com/scl/fi/ys78hcrw5wq0fetxxwije/Civil-plans.pdf?rlkey=lxthdm38sy41x3i4u0ur23njz&st=m87155xk&dl=0>

Recommendation:

After review of the submitted bids, engineering recommends awarding the construction contract to Gillespie Construction LLC.

Fiscal Impact:

The construction and construction administration costs are budgeted in the approved FY26 budget.

Attachments:

1. Ordinance 3296
2. BidWorksheet - Highway 31 Gateway - Signed
3. Vestavia Bid Proposal Form
4. contract documents

ORDINANCE NUMBER 3296

AN ORDINANCE ACCEPTING A BID FOR SOUTHERN GATEWAY SIGNAGE FOR THE CITY, AUTHORIZING THE EXECUTION AND DELIVERY OF THE CONSTRUCTION CONTRACT DOCUMENTS BY AND BETWEEN THE CITY OF VESTAVIA HILLS, ALABAMA, AS “OWNER,” AND GILLESPIE CONSTRUCTION, LLC, AS “CONTRACTOR.”

THIS ORDINANCE NUMBER 3296 is considered, approved, enacted and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 27th day of October, 2025.

WITNESSETH THESE RECITALS:

WHEREAS, on August 13, 2025 at 10:00 a.m., the City of Vestavia Hills, Alabama publicly read aloud bids submitted for southern gateway signage for the City of Vestavia Hills (“the Project”); and

WHEREAS, two bids were received and read, a tabulation which is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3296 as if written fully therein; and

WHEREAS, the Engineering Department submitted a memorandum dated September 3, 2025 recommending acceptance of the bid package submitted by Gillespie Construction, LLC pursuant to the attached proposal, a copy of which is marked as Exhibit B and is attached to and incorporated into this Ordinance Number 3296 for a budget estimated at \$1,175,886.00; and

WHEREAS, the Bid Specifications included, but are not limited to, the following contract documents prepared by the City and to be signed by the City of Vestavia Hills, Alabama, as “Owner,” and the lowest responsible bidder as “Contractor”:

- A. Contract AIA Document A101-2017.
- B. General Conditions AIA Document A201-2017.
- C. Performance Bond AIA Document A312-2010.
- D. Payment Bond AIA Document A312-2010.
- E. First Addendum to Contract and General Conditions; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to follow the recommendation of the Engineering and accept said bid as detailed above and to authorize the execution and delivery of the contract documents.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The bid submitted by Gillespie Construction, as detailed in Exhibit B is attached and recommended by the City Manager and the Engineering Department is hereby accepted; and

2. The Mayor and City Manager are hereby authorized to execute and deliver any and all documents necessary to contract with Gillespie Construction, LLC, including specifically, but not limited to the following contract documents:

- A. Contract AIA Document A101-2017.
- B. General Conditions AIA Document A201-2017.
- C. Performance Bond AIA Document A312-2010.
- D. Payment Bond AIA Document A312-2010.
- E. First Addendum to Contract and General Conditions; and

3. Funding for said project shall be expensed to the City's FY25 Capital Budget; and

4. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance which shall continue in full force and effect notwithstanding such holding.

5. This ordinance shall become effective upon its approval, adoption, enactment and publication by posting as set forth in Title 11-45-8(b), *Code of Alabama, 1975*.

DONE, ORDERED, APPROVED and ADOPTED this the 13th day of October, 2025.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance #3296 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 13th day of October, 2025 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkel House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the ____ day of July, 2025.

Rebecca Leavings
City Clerk

Highway 31 Gateway Sign (#9754106)
Owner: Vestavia Hills AL, City of
Solicitor: Vestavia Hills AL, City of
08/13/2025 10:00 AM CDT

Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Engineer Estimate		Gillespie Construction LLC		Taylor & Miree Construction, Inc.	
						Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
Base Bid							\$50,000.00				
	Base Bid	1	Base Bid (Without allowances)	LS	1			\$1,123,261.00	\$1,175,886.00		\$1,347,405.00
	Contingency Allowance	A	Fixed Allowance (Do not change)	LS	1	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$1,291,780.00	\$1,291,780.00
	Quantity Allowance	B	Quantity allowance for use as directed by engineer.	Cu Yd	75			\$35.00	\$2,625.00	\$75.00	\$5,625.00
Base Bid Total:							\$50,000.00		\$1,175,886.00		\$1,347,405.00

Reviewed By:



City Engineer

PROPOSAL FORM

To: Vestavia Hills AL, City of Date: 8/13/25

In compliance with your Advertisement for Bids and subject to all the conditions thereof, the undersigned,

Gillespie Construction, LLC

(Legal name of Bidder)

hereby proposes to furnish all labor and materials and perform all work required for the construction of

WORK: City of Vestavia Hills - Highway 31 Gateway Sign, inaccordance with Drawings and Specifications, dated, July 14, 2025, prepared by TTL, Inc.10 Inverness Center Parkway, Suite 350, Hoover, AL 35242, Architect.The Bidder, which is organized and existing under the laws of the State of Alabama,having its principal offices in the City of Jasper, Walker Countyis: ☒ a Corporation ☐ a Partnership ☐ an individual ☐ (other) _____

LISTING OF PARTNERS OR OFFICERS: If Bidder is a Partnership, list all partners and their addresses; if

Bidder is a Corporation, list the names, titles and business addresses of its Officers:

Ron Gillespie - Member #4565 Hwy 5
Jasper, AL 35503**BIDDER'S REPRESENTATION:** The Bidder declares that it has examined the site of the Work, having become fully informed regarding all pertinent conditions, and that it has examined the Drawings and Specifications (including all Addenda received) for the Work and the other Bid and Contract Documents relative thereto; and that it has satisfied itself relative to the Work to be performed.**ADDENDA:** The Bidder acknowledges receipt of Addenda Nos. 1 through 1 inclusively.**ALABAMA IMMIGRATION LAW COMPLIANCE:** The Bidder acknowledges by initials RG that he/she will comply with H.B. 56 - Alabama Immigration Law Compliance.**BASE BID:** For construction complete as shown and specified, the sum of One million, One hundred
Seventy five thousand, Eight hundred eighty six [%] Dollars (\$ 1,175,886.00)**ALLOWANCES:** See Attachment A**BID SECURITY:** Required, attach completed Bid Bond**BIDDER'S ALABAMA LICENSE:**

State License for General Contracting:

47928

License Number

Unlimited

Bid Limit

Concrete, drainage
Culverts, sign.

Type(s) of Work

CERTIFICATIONS: The undersigned certifies that he or she is authorized to execute contracts on behalf of the Bidder as legally named, that this proposal is submitted in good faith without fraud or collusion with any other bidder, that the information indicated in this document is true and complete, and that the bid is made in full accord with State law. Notice of acceptance may be sent to the undersigned at the address set forth below.

The Bidder also declares that a list of all proposed major subcontractors and suppliers will be submitted at a time subsequent to the receipt of bids as established by the Architect in the Bid Documents but in no event shall this time exceed twenty-four (24) hours after receipt of bids.

Legal Name of Bidder Gillespie Construction, LLC

Mailing Address 4565 Hwy 5 Jasper, AL 35503

* By (Legal Signature)  (Seal)

* Name & Title (print) Ron Gillespie

Telephone Number 205-295-5203

Email Address ehenson@gillespieconstruction.net

- * If other than an individual proprietor, or an above-named member of the Partnership, or the above-named president, vice-president, or secretary of the Corporation, attach written authority to bind the Bidder. Any modification to a bid shall be over the initials of the person signing the bid, or of an authorized representative.

ATTACHMENT A - ALLOWANCES

ALLOWANCES

Item A: Contingency allowance for use as directed by the Engineer

- A. Contingency allowance of \$50,000 shall be included in the base bid.

Item B: Quantity allowance for use as directed by the Engineer.

- A. Quantity allowance of 75 CY shall be included in the base bid.



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 _____ day of _____ in the year _____
(In words, indicate day, month and year.)

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

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

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

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

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.

The Owner and Contractor agree as follows.

TABLE OF ARTICLES

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

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

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

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

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

§ 3.3 Substantial Completion

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

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

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

☐ By the following date:

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

Portion of Work

Substantial Completion Date

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

ARTICLE 4 CONTRACT SUM

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

§ 4.2 Alternates

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

Item

Price

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

Item

Price

Conditions for Acceptance

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

Item

Price

§ 4.4 Unit prices, if any:

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

Item

Units and Limitations

Price per Unit (\$0.00)

§ 4.5 Liquidated damages, if any:

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

§ 4.6 Other:

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

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

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

(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

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

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

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

§ 5.1.7 Retainage

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

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

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

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

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

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

§ 5.2 Final Payment

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

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

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

§ 5.3 Interest

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

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

_____ % _____

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

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

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

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

(Check the appropriate box.)

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

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

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

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

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

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

§ 8.5 Insurance and Bonds

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

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

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

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

(Insert the date of the E203-2013 incorporated into this Agreement.)

- .5 Drawings

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

- .6 Specifications

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

- .7 Addenda, if any:

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

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

- .8 Other Exhibits:

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

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

☐ The Sustainability Plan:

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

☐ Supplementary and other Conditions of the Contract:

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

.9 Other documents, if any, listed below:

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

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

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)



AIA[®] Document G705[™] – 2001

List of Subcontractors

PROJECT: *(Name and address)*

DATE:

TO ARCHITECT: *(Name and address)*

ARCHITECT'S PROJECT NUMBER:

FROM CONTRACTOR: *(Name and Address)*

CONTRACTOR'S PROJECT NUMBER :

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

Work/Firm Name

Address/Phone

Superintendent

AIA[®] Document A312[™] – 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

OWNER:

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:

(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: ☐ None ☐ See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature: _____

Name and

Title:

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

Signature: _____

Name and

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

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

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

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

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

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

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

§ 14 Definitions

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

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

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

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

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

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

§ 16 Modifications to this bond are as follows:

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

CONTRACTOR AS PRINCIPAL

Company: _____ *(Corporate Seal)*

Signature: _____
Name and Title: _____
Address: _____

SURETY

Company: _____ *(Corporate Seal)*

Signature: _____
Name and Title: _____
Address: _____

Init.

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There are no differences.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Nadine Sisson, 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 10:17:28 on 02/19/2013 under Order No. 5044494851_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A312™ – 2010, Performance Bond, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA[®] Document A312[™] – 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

OWNER:

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:

(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: ☐ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

SURETY

Company: *(Corporate Seal)*

Signature: _____

Name and

Title: _____

Signature: _____

Name and

Title: _____

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

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:
OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

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.

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

Init.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

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

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

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

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

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

§ 16 Definitions

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

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

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

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

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

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

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

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CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

SURETY

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

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Certification of Document's Authenticity

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(Signed)

(Title)

(Dated)

DRAFT AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

City of Vestavia Hills - Highway 31 Gateway Sign
1493 Montgomery Highway
Vestavia Hills, AL 35216

THE OWNER:

(Name, legal status and address)

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

THE ARCHITECT:

(Name, legal status and address)

TTL, Inc.
10 Inverness Center Parkway, Suite 350
Hoover, AL 35242

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set

forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

§ 2.3 Information and Services Required of the Owner

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

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

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

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

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

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

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent

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

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not

have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

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

§ 5.3 Subcontractual Relations

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

similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the

Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

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

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

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor

change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

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

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

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

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot

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

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

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

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

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

§ 9.6 Progress Payments

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

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

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

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

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

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

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

- § 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
 - .2 failure of the Work to comply with the requirements of the Contract Documents;
 - .3 terms of special warranties required by the Contract Documents; or
 - .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

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

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

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

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

§ 11.2 Owner's Insurance

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

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

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

§ 11.3 Waivers of Subrogation

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

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

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

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

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,

the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

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

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

Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

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

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

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

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

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

§ 15.3 Mediation

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

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

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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

STATE OF ALABAMA

JEFFERSON COUNTY

**FIRST ADDENDUM TO CONSTRUCTION CONTRACT AND
GENERAL CONDITIONS BY AND BETWEEN OWNER AND CONTRACTOR**

WITNESSETH THIS FIRST ADDENDUM TO CONSTRUCTION CONTRACT AND GENERAL CONDITIONS, by and between the City of Vestavia Hills, Alabama, a municipal corporation, as "Owner" ("City"), and _____, as "Contractor", made and entered into on this the ____ day of _____, 2022.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama, a municipal corporation, as "Owner," and _____, as "Contractor," have executed and delivered a Construction Contract (being "AIA Document A101-2017") and General Conditions (being "AIA Document A201-2017") on this date; and

WHEREAS, the Owner and Contractor wish to amend the Construction Contract and General Conditions by the execution and delivery of this First Addendum.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the Owner and Contractor hereby mutually and expressly amend the Construction Contract and General Conditions as set forth below.

Notwithstanding anything contained in the Construction Contract and General Conditions to the contrary, the Owner and Contractor agree to modify, add and/or delete the following terms, provisions, limitations and conditions to said Construction Contract and General Conditions:

A. PUBLIC WORKS PROJECT: The following language is hereby added to Article 2 on page 1 of the contract:

"The Owner and Contractor agree that the work described in Article 2 on page 1 of the contract is a public works project as defined by Title 39-2-1(6), *Code of Alabama, 1975*, and that the Public Works law of Alabama set forth in Title 39-1-1, et seq., *Code of Alabama, 1975*, applies to this contract."

B. PERFORMANCE BOND AND PAYMENT BOND: The following language is hereby added to Section 11.1.2 on page 30 of the General Conditions:

"1. Before commencing the work, Contractor shall execute and deliver a Performance Bond using AIA Document A312-2010, with penalty equal to one hundred percent (100%) of the amount of the contract price (\$_____).

(revised 01/12/2022)

2. Before commencing the work, Contractor shall execute and deliver a Payment Bond using AIA Document A312-2010 payable to the City of Vestavia Hills, Alabama executed in the amount of the contract price of (\$_____) with the obligation that the Contractor shall promptly make all payments to persons supplying labor, materials or supplies for or in the prosecution of the work provided in the contract and for the payment for reasonable attorneys' fees incurred by successful claimants or plaintiffs in civil actions on the bond.

3. The Performance Bond and the Payment Bond referred to in sections 1 and 2 above shall be executed and delivered all in accordance with the requirements of the Alabama Public Works Law set forth at Title 39-1-1(a), *Code of Alabama, 1975.*"

C. **REQUIREMENT FOR ARCHITECT:** The following language is hereby added to Section 2.3.2 on page 11 of the General Conditions,

"The Architect shall be selected by the Owner all in accordance with Title 34-2-30 and Title 34-2-32(c), *Code of Alabama, 1975.*"

D. **REQUIREMENT FOR ENGINEERS:** The following language is hereby added as Section 2.3.7 on page 12 of the General Conditions,

"Any and all engineers selected by the Contractor, any subcontractor or the Owner shall be selected all in accordance with the requirements of Title 34-11-10, *Code of Alabama, 1975.*"

E. **REQUIREMENT OF LICENSED GENERAL CONTRACTOR:** The following language is hereby added to Section 3.1.1 on page 12 of the General Conditions as follows,

"The Contractor represents and warrants that it is properly licensed by the State of Alabama as required by Title 34-8-1(a), *Code of Alabama, 1975.*

F. **LIMITS OF INSURANCE COVERAGES:** The following language is hereby added to Section 11.1.1 on page 30 of the General Conditions:

"LIMITS OF INSURANCE COVERAGES: The insurance policy limits for the insurance coverages referred to in Article 11 of the General Conditions shall be as follows:

11.1.1. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY COVERAGE:

1. Worker's Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating that the Contractor qualifies to pay its own workers' compensation claims.

2. Employer's Liability Insurance limits shall be at least:
 - (a) Bodily Injury by Accident--\$1,000,000 each accident
 - (b) Bodily Injury by Disease--\$1,000,000 each employee

11.1.1. COMMERCIAL GENERAL LIABILITY INSURANCE:

1. Commercial General Liability Insurance ("CGL"), written on an ISO Occurrence Form (current edition of ISO CG 00 01 as of the date of Advertisement of Bids) or equivalent, shall include but need not be limited to coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The Commercial General Liability Insurance shall provide at minimum the following limits:

<u>Coverage</u>	<u>Limit</u>
(a) General Aggregate	\$2,000,000 per Project
(b) Products, Completed Operations Aggregate	\$2,000,000 per Project
(c) Personal and Advertising Injury	\$1,000,000 per Occurrence
(d) Each Occurrence	\$1,000,000

2. Additional Requirements for Commercial General Liability Insurance:

(a) The policy shall name the City of Vestavia Hills, Alabama, as Owner, and its public officials and employees, and its agents, consultants and employees as additional insureds (the "Indemnitees"), and state that this coverage shall be primary insurance for the additional insureds. Evidence that Contractor's insurance is primary with respect to any coverages available to the Indemnitees shall be provided in the form of an endorsement to the Contractor's CGL policy. Evidence that the Indemnitees have been named as additional insureds shall be provided by endorsements equivalent to ISO CG 2010 or CG 2033 and CG 2037.

- (b) The policy must include separate per project aggregate limits.

11.1.1. COMMERCIAL BUSINESS AUTOMOBILE LIABILITY INSURANCE:

1. Commercial Business Automobile Liability Insurance shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each occurrence.

2. The policy shall name the Owner, City of Vestavia Hills, Alabama, its public officials and employees, and its agents, consultants and employees as additional insureds.

11.1.1. COMMERCIAL UMBRELLA LIABILITY INSURANCE:

1. Umbrella Liability Insurance shall provide coverage limits excess of the Commercial General Liability, Commercial Business Automobile Liability and the Employers' Liability coverage limits, on a follow-form basis, to satisfy the minimum limits set forth herein.

2. Minimum Combined Primary Commercial General Liability and Commercial/Excess Umbrella Limits of:

(a) \$5,000,000 per Occurrence

(b) \$5,000,000 Aggregate.

11.1.1. **BUILDER'S RISK INSURANCE:** The Builder's Risk Policy shall be provided by the Contractor.

11.1.1. **SUBCONTRACTOR'S INSURANCE:**

1. **Worker's Compensation and Employer's Liability Insurance:** The Contractor shall require each Subcontractor to obtain and maintain statutory Workers' Compensation Insurance and adequate Employer's Liability Insurance covering all employees working on the jobsite.

2. **Liability Insurance:** The Contractor shall require each Subcontractor to obtain and maintain adequate Commercial General Liability and Automobile Liability Insurance coverages equal to those of the Prime Contractor. Such coverages shall be in effect at all times that the Subcontractor is performing Work under the Contract.

3. **Enforcement Responsibility:** The Contractor shall have responsibility to enforce its Subcontractors' compliance with these or similar insurance requirements; however, the Contractor, shall, upon request, provide the Owner acceptable evidence of insurance for any Subcontractor.

11.1.1. **TERMINATION OF OBLIGATION TO INSURE:** Unless otherwise expressly provided in the Contract Documents, the obligation to insure as provided herein shall continue as follows:

1. **Products and Completed Operations.** The obligation to carry Products and Completed Operations coverage specified under subparagraph B(2) shall remain in effect for at least the time period established by applicable state law for bringing actions based on defective construction or design claims.

2. **All Other Insurance.** The obligation to carry their insurance coverages specified above shall remain in effect after the Date(s) of Substantial Completion until such time as all Work required by the Contract Documents is completed. Equal or similar insurance coverages shall remain in effect if, after completion of the Work, the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable returns to the Project to perform warranty or maintenance work pursuant to the terms of the Contract Documents.

11.1 The Contractor shall, at the Contractor's own expense, provide insurance coverage for materials stored off the site after written approval of the Owner at the value established in the approval, and also for portions of the work in transit until such materials are permanently attached to the Work.

The insurance required herein is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment."

G. ADDITIONAL INSUREDS: Section 11.1.5 is hereby added on page 31 of the General Conditions, which shall read in words and figures as follows:

“SECTION 11.1.5 ADDITIONAL INSUREDS: The Contractor shall cause all of the insurance policy coverages described in Article 11 of the General Conditions of the Construction Contract and hereinabove (except for the Worker’s Compensation coverages) to include:

1. The City of Vestavia Hills, Alabama, a municipal corporation, and its elected public officials and employees, 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/or performance of the work; and

2. The City of Vestavia Hills, Alabama, a municipal corporation, and its elected public officials and employees as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s completed operations and/or performance of the work; and

3. The insurance policy coverages shall state that these coverages shall be primary insurance for the additional insureds.

4. Contain no exclusions of the additional insureds relative to job accidents; and

5. The policies must be on an ‘occurrence’ basis.”

H. SALES TAXES: Section 3.6 on page 14 of the General Conditions is hereby amended to read as follows:

“The Contractor and the Owner shall avoid the payment of sales, use and similar taxes by using the process outlined in Act Number 2013-205 now codified at Title 40-9-14.1, *Code of Alabama, 1975.*”

I. MATERIALMEN’S LIENS: Section 2.1.2 on page 11 of the General Conditions is hereby amended to read in words and figures as follows:

“Anything contained in the Contract and/or General Conditions to the contrary notwithstanding, including specifically but not limited to, Sections 2.12, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 10.4 and 15.2.8, the Contractor and Owner specifically agree that claims for unpaid labor, materials or supplies for this public works project shall be resolved by the requirements and process set forth in Title 39-1-1(b), *Code of Alabama, 1975.*”

J. INDEPENDENT CONTRACTOR: Section 3.3.4 is hereby added to page 13 of the General Conditions and shall read as follows:

“The Contractor is an independent contractor for the purposes of this contract. Nothing contained in the contract shall be construed to mean that the Contractor is the servant, agent or employee of the City of Vestavia Hills, Alabama.”

K. CHANGE ORDERS: The following language is hereby added to the General Conditions on page 22 as Section 7.2.2:

“Anything contained herein to the contrary notwithstanding, the guidelines, which provide criteria for approving change orders to an existing public works contract are set forth in an opinion issued to the Alabama State Building Commission on June 15, 1979 by the State of Alabama Attorney General. Contractor and Owner agree that said opinion sets forth the guidelines for determining whether or not a proposed change order is legally justified. The Owner, its Architect and legal advisor shall sign any and all change order justifications.”

L. COMPLIANCE WITH ALL LAWS: The following section 3.7.4 is hereby added to the General Conditions on page 14 thereof:

“**GENERAL COMPLIANCE WITH ALL LAWS:** Contractor shall comply with the provisions of the labor law and all state, federal and local laws, statutes, codes, rules, regulations and ordinances that are applicable to the performance of this Contract Between City and Contractor, including specifically, but not limited to Ordinance Numbers 2769, 2770 and 2771 enacted by the City Council of the City of Vestavia Hills, Alabama on June 11, 2018.”

M. MUNICIPALITIES CANNOT INDEMNIFY AND HOLD HARMLESS THIRD PARTIES: Sections 10.3.3 and 10.3.6 on page 30 of the General Conditions are hereby deleted in their entireties.

N. **IMMIGRATION:** The following section 16.1 is hereby added to the General Conditions on page 39 thereof:

“IMMIGRATION: By signing this Contract, the contracting parties affirm, for the duration of the Contract, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Contract and shall be responsible for all damages resulting therefrom.”

O. **BOYCOTT LIMITATIONS:** The following section 16.2 is hereby added to the General Conditions on page 39 thereof:

“COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS: Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. The Contractor represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.”

P. **RETAINAGE:** The following language is added to Section 5.1.7.1 of the Construction Contract:

(1) “Retainage” is defined as the money earned and, therefore, belonging to the Contractor (subject to final settlement of the Contract) which has been retained by the Owner conditioned on final completion and acceptance of all Work required by the Contract Documents. Retainage shall not be relied upon by Contractor (or Surety) to cover or off-set unearned monies attributable to uncompleted or uncorrected Work.

(2) In making progress payments the Owner shall retain five percent of the estimated value of Work performed and the value of materials stored for the Work; but after retainage has been held upon fifty percent of the Contract Sum, no additional retainage will be withheld.

Q. MISCELLANEOUS: Article 18 entitled “Miscellaneous” is hereby added to the General Conditions:

“ARTICLE 18. MISCELLANEOUS:

(a) **Non Waiver:** The failure of the Owner to insist, in any one or more instances, upon a strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect.

(b) **Waiver of Modification:** Any waiver, alteration or modification of any of the provisions of this agreement or cancellation or replacement of this agreement shall not be valid unless in writing and signed by the parties hereto. This agreement may be amended at any time by written agreement of the parties signatory hereto.

(c) **Notices:** Any and all notices required or permitted to be given under this agreement will be sufficient if furnished in writing and sent by Registered Mail to the parties’ last known address.

(d) **Governing Law:** This agreement shall be interpreted, construed and governed to the laws of the State of Alabama.

(e) **Article and Section Headings:** The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

(f) **Construction of Terms:** Any ambiguities of this contract shall be construed fairly and equitably regardless of the participation of either party in drafting this contract. The reference in terms to gender and number shall be modified as may be appropriate.

(f) **Execution in Counterparts:** The contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(g) **Binding Effect:** The contract shall inure to the benefit of, and shall be binding upon Owner and Contractor and their heirs, successors and assigns.

(h) **Severability:** In the event any provision of this contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(i) **Entire Agreement:** This written contract contains the entire agreement between the Owner and the Contractor.

R. CONTRACT DOCUMENTS: The following language is hereby added to Article 1 on page 2 of the Contract:

“The contract documents described above shall also include the following:

1. AIA Document A312-2010 Performance Bond.
2. AIA Document A312-2010 Payment Bond.
3. This First Addendum to the Contract and General Conditions.”

S. RATIFY CONTRACT AND GENERAL CONDITIONS: Article 17 is hereby added to the General Conditions to read in words and figures as follows:

“The Owner and Contractor hereby ratify and reconfirm the terms, provisions, limitations and conditions of the contract documents that were not modified or otherwise amended by this First Addendum to Construction Contract.”

IN WITNESS WHEREOF, the Owner and Contractor have hereunto set their hands and seals all being done in duplicate originals with one (1) original being delivered to each party on the day first above written.

OWNER:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Ashley C. Curry
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

CONTRACTOR:

By

Its

ATTESTED

By

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby
certify that _____ whose name as
_____, is signed to the First Addendum to
Construction Contract and General Conditions who is known to me, acknowledged before me on
this day that, being informed of the contents of the instrument, he, as such officer and with full
authority, executed the same voluntarily for and as the act of said
_____.

Given under my hand and official seal, this the _____ day of _____, 2022.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Addendum to Construction Contract and General Conditions and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2022.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Addendum to Construction Contract and General Conditions and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2022.

Notary Public

My Commission Expires:

SEAL



**CITY OF VESTAVIA HILLS
PLANNING & ZONING
INTER-DEPARTMENT MEMO**

October 13, 2025

To: Jeff Downes, City Manager

From: Conrad Garrison, City Planner

Cc: Rebecca Leavings, City Clerk

RE: Public Hearing - Ordinance Number 3290 - Pre-zoning - 2560 Rocky Ridge Road; Rezone from Jefferson County C-P (commercial preferred) to Vestavia Hills R-9 (planned residential) for construction of eight (8) single family residences; Hartbrook Development, owner; Brandon Hays, representing

Background:

This request is for annexation and construction of eight (8) single-family homes. The property is currently zoned JC C-P (commercial preferred) for office use. There are existing covenants on the property restricting the commercial use and any development on the property. The covenants void if the property is ever rezoned to another zoning classification. A Draft of the restrictive covenants for the subdivision are included.

Recommendation:

The request has been reviewed by the P&Z Commission with unanimous approval for recommendation with the stipulation that the subdivision be built

substantially as shown in the preliminary plat attached and that final covenants be submitted at the final plat hearing.

Fiscal Impact:

na

Attachments:

1. Ordinance 3290
2. Brookhaven covenants draft
3. Rezoning protest

ORDINANCE NUMBER 3290

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM JEFFERSON COUNTY C-P TO VESTAVIA HILLS R-9

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Jefferson County C-P (commercial preferred) to Vestavia Hills R-9 (planned residential district):

2560 Rocky Ridge Road
Hartbrook Development LLC, owner(s)

More particularly described as follows:

Beginning at the NW corner of the NE $\frac{1}{4}$ of the tffl $\frac{1}{4}$ of Section 32, Township 18 South, Range 2 West in Jefferson County, Alabama, run South along West line of said quarter-quarter section 997.78 feet to the point of beginning, thence run South along said West line 102.29 feet, thence turning an angle to the left of 73 degrees 40' and run Southeasterly 703.64 feet to an intersection with the Westerly line of Rocky Ridge Road, said point of intersection being 25' West of the center line of said road, thence turning an angle to the left of 79 degrees 2' and run Northeasterly along said westerly line of said road 100 feet; thence turning an angle to the left of 100 degrees 48' and run Westerly 751.43 feet to the point of beginning.

BE IT FURTHER ORDAINED that said development be constructed substantially as described in plans attached to and incorporated into this Ordinance Number 3290 as if written fully therein with a maximum number of eight (8) single family detached homes pursuant to the attached preliminary plat and that private restrictive covenants be presented to the Planning and Zoning Commission at presentation of the final plat; and

This ordinance number 3290 shall become effective immediately upon adoption and approval following publishing/publication as required by Alabama law.

APPROVED and ADOPTED this the 13th day of October, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

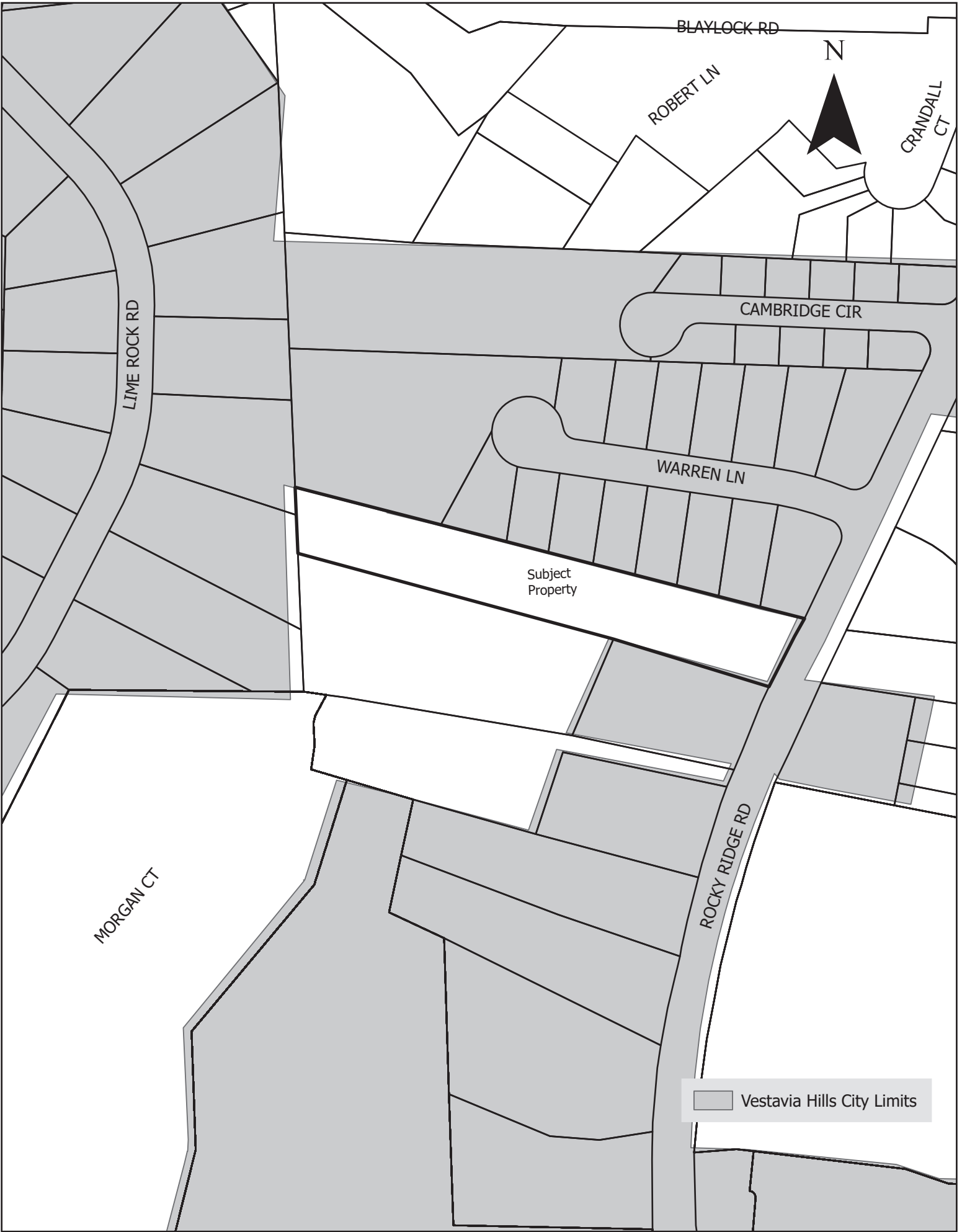
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3290 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 13th day of October, 2025 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel House this the _____ day of _____, 2025.

Rebecca Leavings
City Clerk





City of Vestavia Hills

Planning and Zoning Commission Review and Recommendation



Case Number: RZ-25-6
Owner Name: Hartbrook Development LLC
Owner Address: 1280 Moores Mill Road, Suite 209, Auburn, AL 36830
Representative: Brandon Hays
Rep. Address: 1280 Moores Mill Road, Ste. 209, Auburn, AL 36830

Project Address: 2560 Rocky Ridge Road
Legal Description: Beginning at the Northwest corner of the NE¼ of the tffl ¼ of Section 32, Township 18 South, Range 2 West in Jefferson County, Alabama, run South along West line of said quarter-quarter section 997. 78 feet to point of beginning; thence run South along said West line 102.29 feet. thence turning an angle to the left of 73°40' and run Southeasterly 703.64 feet to an intersection with the Westerly line of Rocky Ridge Road, said point of intersection being 25 feet West of the center line of said road, thence turning an angle to the left of 79°2' and run Northeasterly along said Westerly line of said road 100 feet; thence turning an angle to the left of 100°58' and run Westerly 751.43 feet to the point of beginning.
Parcel ID Number: 28 00 32 2 002 033.000
Current Zoning: County CP Preferred Commercial
Requested Zoning: R9
Intended Purpose: New development of eight (8) single-family detached cottages. 2200-2400 sq. ft.

MOTION Mr. Weaver made a motion to recommend Rezoning for 2560 Rocky Ridge Rd. from Jefferson County CP to Vestavia Hills R-9 conditioned on the materials presented and all CC&R's being submitted at the time of final plat.

Second was by Mr. Farrell. Motion was carried on a roll call; vote as follows:

P&Z

Recommendation: Mr. Farrell – yes Mr. Vercher – yes
Mr. Romeo – yes Mr. Weaver – yes
Mr. Blackenburg – yes Mr. Sykes – yes
Mr. Honeycutt – yes Ms. Cochran – yes
Motion carried.

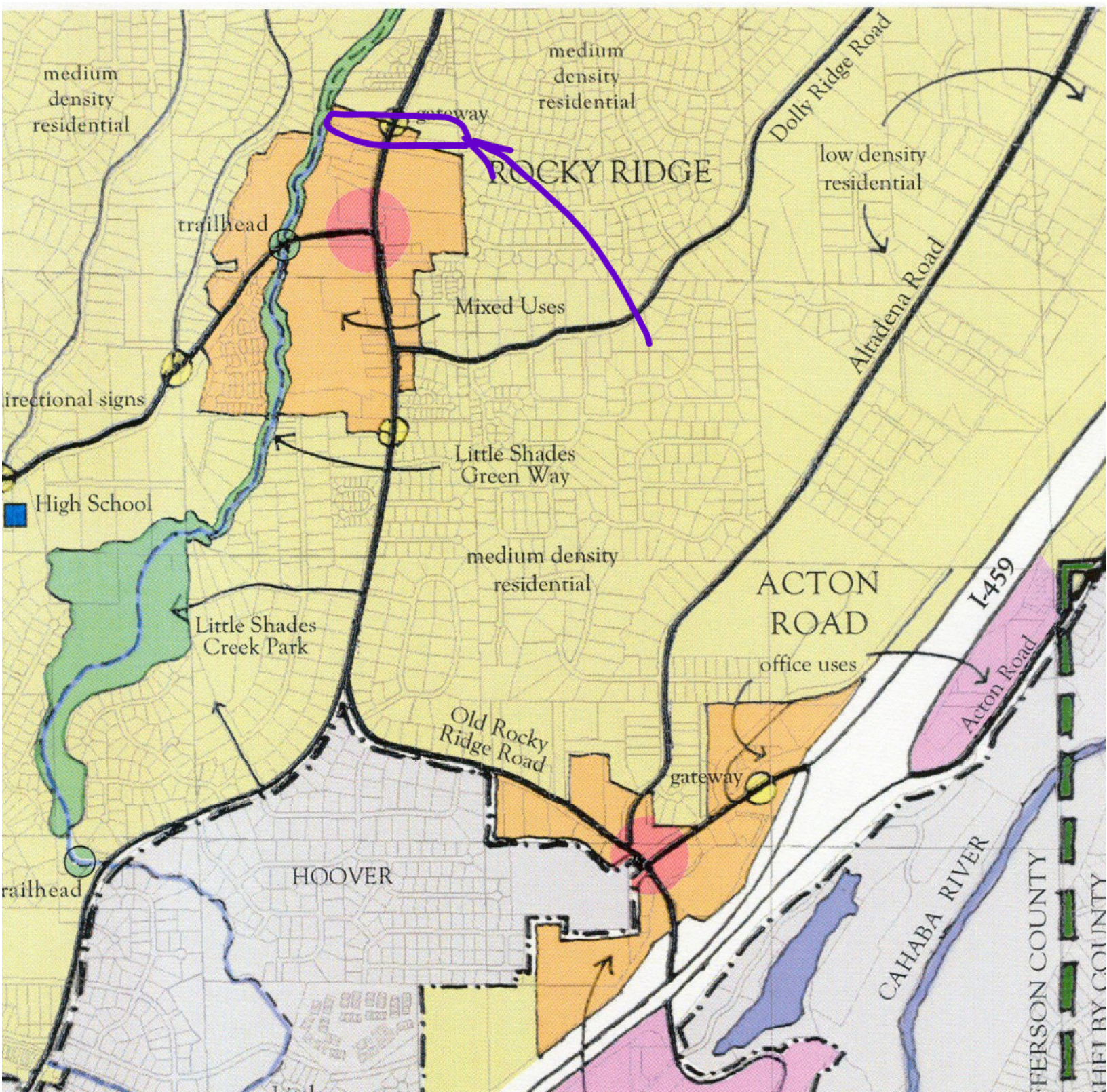
Date of P&Z Meeting: August 14, 2025

Authorized by:

Vestavia Hills Planning and Zoning Commission,
Michael Vercher, Chair

Issued by:

Conrad Garrison, City Planner



User Advisory

Property Information

Subject Property Address	Tax Parcel ID Number
2560 Rocky Ridge Road	28 00 32 2 002 033.000
Legal Description	
Beginning at the Northwest corner of the NE¼ of the tffl ¼ of Section 32, Township 18 South, Range 2 West in Jefferson County, Alabama, run South along West line of said quarter-quarter section 997. 78 feet to point of beginning; thence run South along said West line 102.29 feet. thence turning an angle to the left of 73°40' and run Southeasterly 703.64 feet to an intersection with the Westerly line of Rocky Ridge Road, said point of intersection being 25 feet West of the center line of said road, thence turning an angle to the left of 79°2' and run Northeasterly along said Westerly line of said road 100 feet; thence turning an angle to the left of 100°58' and run Westerly 751.43 feet to the point of beginning.	
Existing Parking Spaces	Proposed Parking Spaces
--	--
Submission Date	Type of Project
07/10/2025	New Residential Subdivision

Action Requested:

From Existing Zoning Classification	To Requested Zoning Classification
County	R9
For the Intended Purpose of:	
New development of eight (8) single-family detached cottages. 2200-2400 sq. ft.	
Acreage of Subject Property	Acreage of Property to be Disturbed
1.62 acres	1.14

Setbacks

Front	Back
10	10
Side	Open Space
5	0.78
Lot Coverage Percentage	Tree Save Plan - I acknowledge that a if this is a new non-residential development or is a residential development in excess of 3 units, that I am required to submit a tree save plan concurrent with this application (excludes PUDs).
--	

Owner Information

Applications must be either submitted by the owner of the property or a representative duly appointed by the owner by way of a notarized letter and/or power of attorney.

Owner Address City State Zip

1280 Moores Mill Road, Suite 209, Auburn, AL 36830

Owner's Phone Number

205-568-0551

By checking this box, I hereby affirm that I am the representative of the owner duly authorized to represent this petition for rezoning. Simultaneously with this application, I am submitting notarized documentation from the owner which authorizes me to represent this case. If no authorization is provided, this application cannot be processed.

true

Mailing Address of Responsible Party

1280 Moores Mill Road, Ste. 209, Auburn, AL 36830

Phone No. of Responsible Party

205-568-0551

Property Owner Name

Hartbrook Development LLC

Company Name

--

Email Address of Owner

brandon@hartbrook.com

Owner Representative/Responsible Party

Brandon Hays

Company Name

Hartbrook

Contact Email of Responsible Party

brandon@hartbrook.com

Email Address of Responsible Party

brandon@hartbrook.com

Project Engineer Information (if applicable)

Name

Josh Mura

Mailing Address

2449 Moores Mill, Suite 120, Auburn, AL 36830

Phone Number

706-834-7379

Company

Samford Group

Email

josh@samfordgroupllc.com

2560 ROCKY RIDGE ROAD
VESTAVIA HILLS, AL 35243

PARCEL NUMBER: 2800322002033000
ADEM PERMIT: TBD

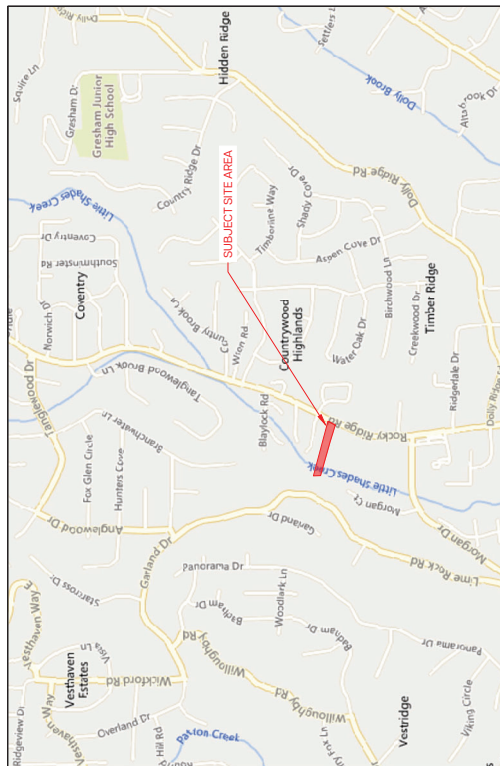
OWNER/DEVELOPER: BRANDON HAYS
HARTBROOK DEVELOPMENT
1280 MOORES MILL ROAD, SUITE 209,
AUBURN, AL 36830
PHONE: 205-568-0551

SEWER: JEFFERSON COUNTY ENVIRONMENTAL SERVICES
716 RICHARD ARRINGTON JR. BLVD NORTH, SUITE A 300
BIRMINGHAM, AL 35203
PHONE: 205-325-5496

JURISDICTION INFORMATION	PLANNING : CITY OF VESTAVIA HILLS 1032 MONTGOMERY HIGHWAY VESTAVIA HILLS, AL 35216 PHONE: 205-978-0181 JEFFERSON COUNTY STREET ACCESS: JEFFERSON COUNTY ROADS AND TRANSPORTATION 716 RICHARD ARRINGTON JR. BLVD. N BIRMINGHAM, AL 35203 PHONE: 205-325-5141 FIRE MARSHALL: VESTAVIA HILLS FIRE DEPARTMENT 1032 MONTGOMERY HIGHWAY VESTAVIA HILLS, AL 35216 CHRIS VINES, FIRE MARSHALL 205-978-0224
--------------------------	---

SITE INFORMATION	
SITE AREA	162 AC.
TOTAL SITE AREA	162 AC.
IMPROVED AREA	0.78 AC.
OPEN SPACE AREA	
ZONING CLASSIFICATION	CITY OF VESTAVIA HILLS
JURISDICTION	R-9
PROPOSED ZONING	
LOT SUMMARY	8 LOTS
TOTAL PROPOSED LOTS:	43,772.00 (SQ. FT.)
TOTAL LOT AREA:	434 DU/AC
PROPOSED LOT DENSITY:	
SETBACKS	
FRONT SETBACK:	10 FT.
GARAGE SETBACK:	18 FT.
REAR SETBACK:	10 FT.
SIDE SETBACK:	5 FT.

VICINITY MAP



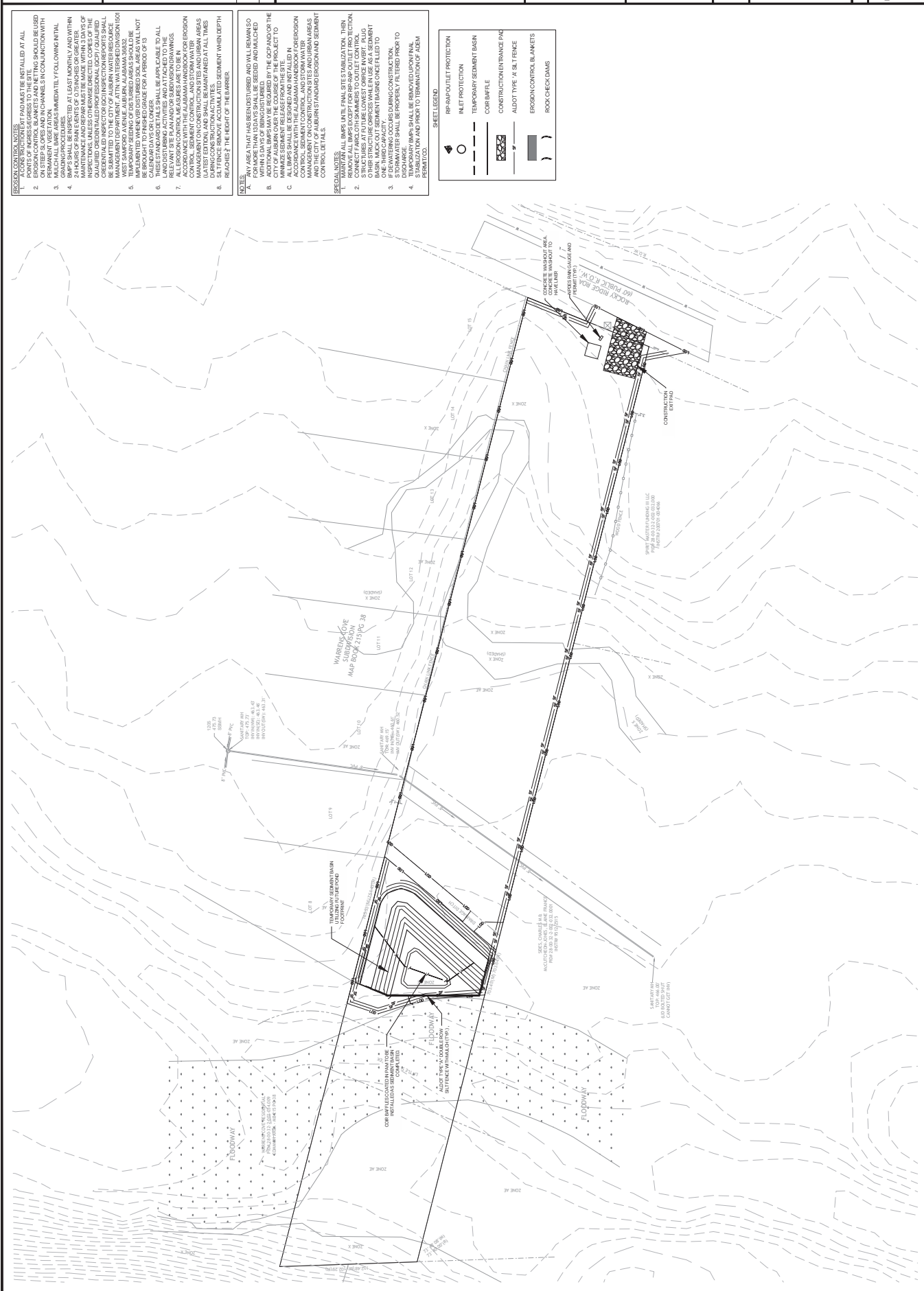
VICINITY MAP

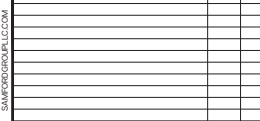
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SHEET NUMBER		
C-00	COVER SHEET	
C-01	GENERAL NOTES	
10-F1	SURVEY	
C-10	DEMO PLAN	
C-20	EROSION PLAN PH1	
C-21	EROSION PLAN PH2	
C-22	EROSION PLAN PH3	
C-23	EROSION PLAN NOTES	
C-30	SITE PLAN	
C-40	GRADING PLAN	
C-41	POND DETAILS	
C-50	SEWER PLAN	
C-60	WATER PLAN	
C-70	ROAD PROFILES	
C-80	SIGHT DISTANCE PROFILES	
C-90	CONSTRUCTION DETAILS	
C-91	CONSTRUCTION DETAILS	
L-10	LANDSCAPE PLAN	

[illegible]

C-0.1

[illegible]



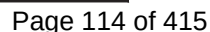


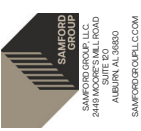
SEAL: AUTHORIZED BY: Gregory H. Biford, Jr.
 William L. Forcum, Albarine, AL 36002



C-2.1

	RIP-RAP/OUTLET PROTECTION
	INLET PROTECTION
	TEMPORARY SEDIMENT BASIN
	COIR BAFFLE
	CONSTRUCTION ENTRANCE PAD
	ALDOT TYPE 'A' SILT FENCE
	EROSION CONTROL BLANKETS
	ROCK CHECK DAMS





BROOKSTONE MANOR
2560 ROCKY RIDGE ROAD
VESTAVIA HILLS, JEFFERSON COUNTY, AL 35243



DESIGN TEAM
DRAWN BY: JAM
CHECKED BY: JAM
DESIGNED BY: JAM
SCALE: 1" = 30'



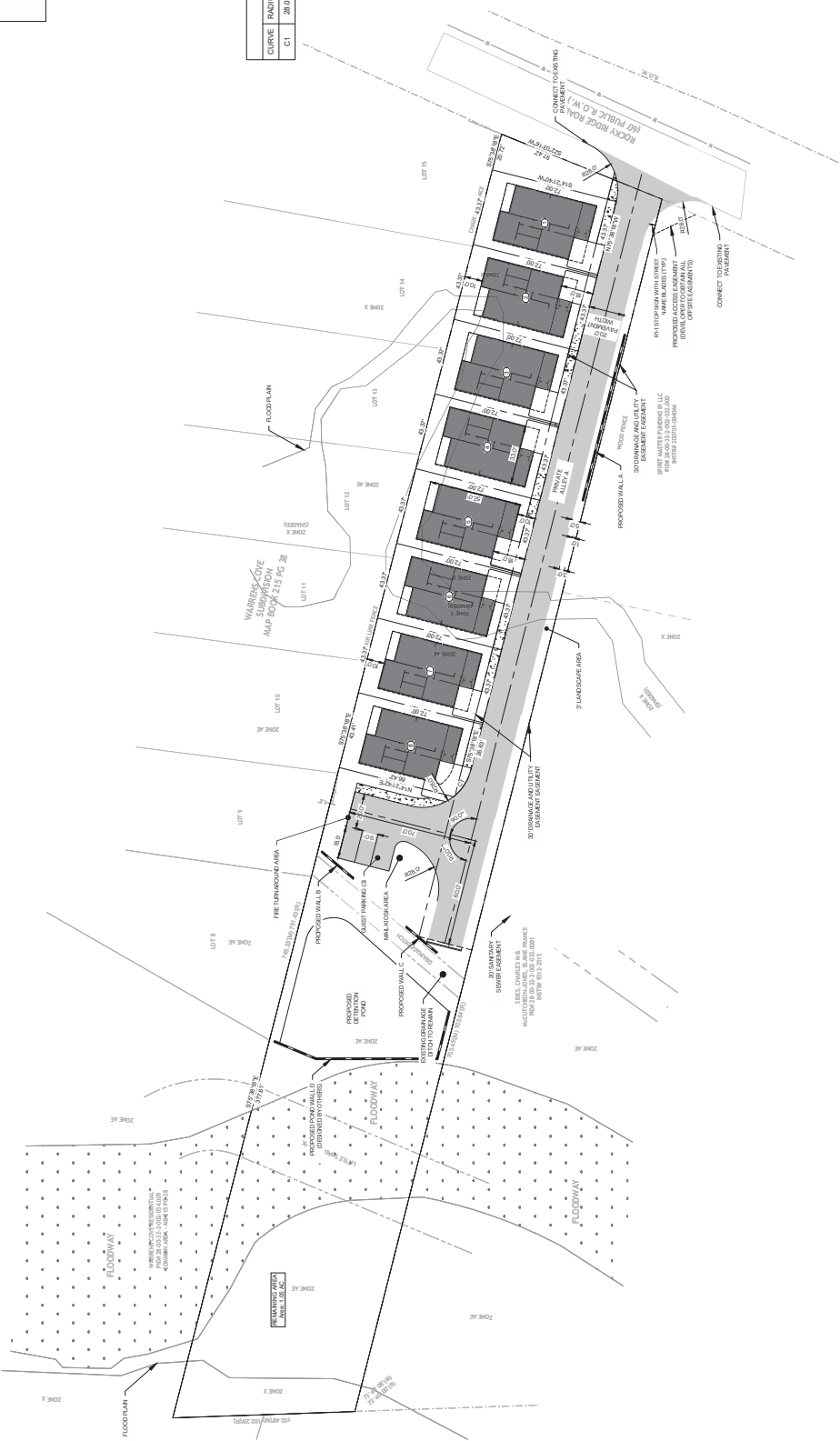
CAD NUMBER: 7/00/2025
DATE: 7/00/2025
SHEET TITLE: SITE PLAN

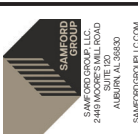
C-3.0

SITE INFORMATION
SITE AREA: 182 AC.
TOTAL SITE AREA: 0.48 AC.
OPEN SPACE AREA: 0.78 AC.
ZONING: SUBDIVISION
JURISDICTION: CITY OF VESTAVIA HILLS
PROP. ZONING: R-9
LOT SUMMARY: 8 LOTS
TOTAL PROPOSED LOTS: 43 X 72 (3,096 SF)
TYP. LOT SIZE: 434 DU/AC
PROPOSED LOT DENSITY: 434 DU/AC
SETBACKS:
FRONT SETBACK: 10 FT.
SIDE SETBACK: 5 FT.
REAR SETBACK: 5 FT.
SIDE SETBACK: 5 FT.

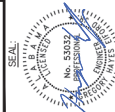
Parcel Area Table		
Parcel #	Area (SF)	NAME
4	3122.64	SFD LOT
1	3122.64	SFD LOT
2	3122.64	SFD LOT
3	3122.64	SFD LOT
6	3122.64	SFD LOT
5	3122.64	SFD LOT
7	3122.64	SFD LOT
8	3096.07	SFD LOT
1,0001	45639.59	REMAINING AREA

Curve Table					
CURVE	RADIUS	LENGTH	CHORD BEARING	CHORD	TANGENT
C1	28.00'	17.99'	N 87° 13' 31" W	17.88'	36° 48' 51" E
					9.32'





BROOKSTONE MANOR
2560 ROCKY RIDGE ROAD
VESTAVIA HILLS, JEFFERSON COUNTY, AL 35243



Authorized By: Gregory H. Elford, Jr.
Alabama License Number: 53032



DESIGN TEAM
DRAWN BY: JAM
DESIGNED BY: JAM

SCALE & NORTH ARROW

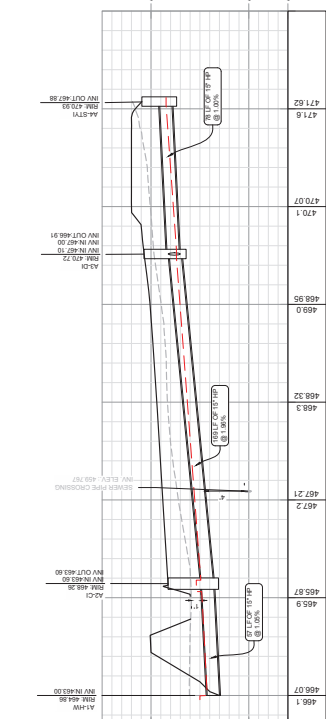
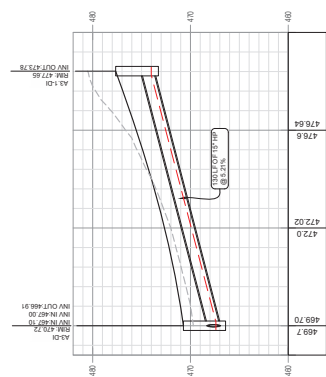
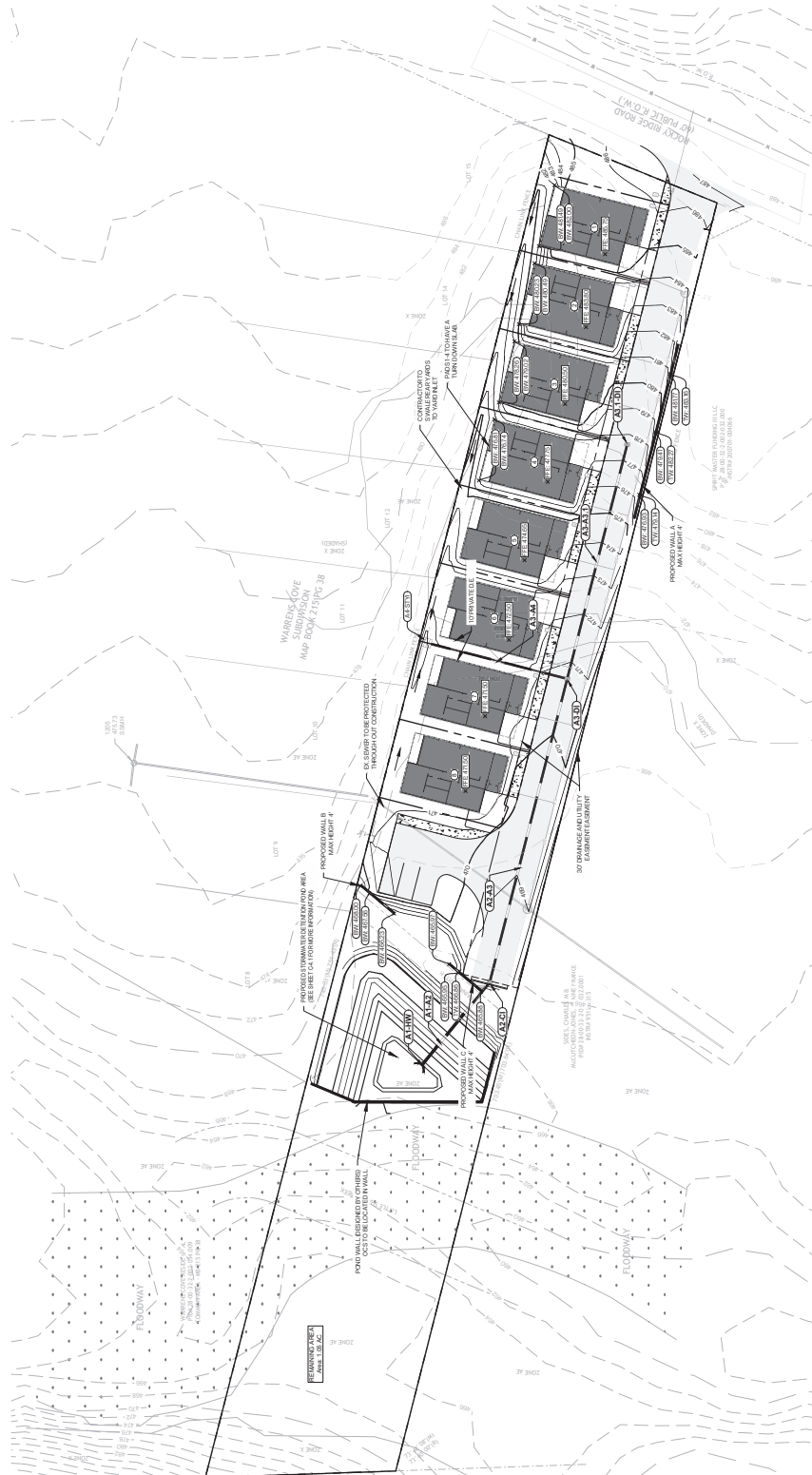


CUSTOMER: 7/02/2025
SHEET TITLE: GRADING PLAN & PROFILES

C-4.0

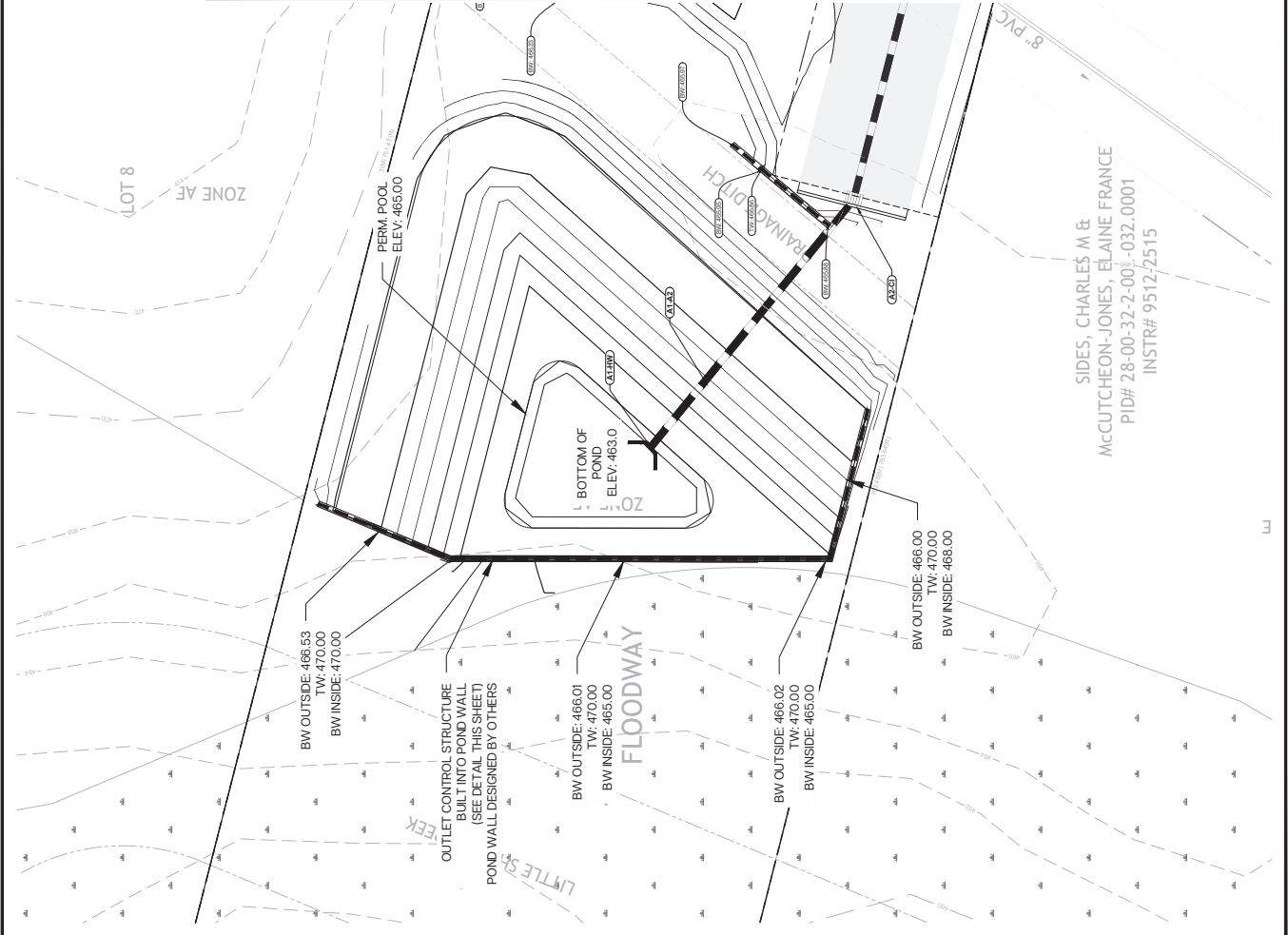
EARTHWORK CALCULATIONS:
TOTAL CUT: 456 CU.YD.
TOTAL FILL: 3275 CU.YD.
FILL FACTOR: 20%
NET CU.YD. 2,850 (FILL)

GRADING NOTES
CONTRACTOR SHALL VERIFY THE LOCATIONS OF ALL EXISTING UTILITIES PRIOR TO ANY GRADING ACTIVITIES. ANY UTILITIES NOT SHOWN ON THESE DRAWINGS ARE ENCOUNTERED BETWEEN THE CONSTRUCTION DRAWINGS AND FINDINGS IN THE FIELD.
NO PAD ELEVATION CAN BE BELOW 471.00 PER FLOOD ANALYSIS.
CONTRACTOR TO SWALE ALL WATER AWAY FROM BUILDING PADS.



STORM# A3 TO A31

STORM# A1 TO A4



[illegible]

CONTRACTOR SHALL VERIFY THE LOCATIONS OF ALL EXISTING UTILITIES PRIOR TO ANY GRADING ACTIVITIES AND NOTIFY SANFORD GROUP IF DISCREPANCIES ARE ENCOUNTERED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND RECORDING THE DRAWINGS AND FINDINGS IN THE FIELD.



SAMDOR GROUP LLC
 2440 MOORE'S HILL ROAD
 AUBURN, AL 36830
 SAMFORD@GMAIL.COM

BROOKSTONE MANOR
 2560 ROCKY RIDGE ROAD
 VESTAVIA HILLS, JEFFERSON COUNTY, AL 35243

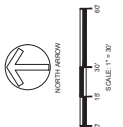


Authorized By: Gregory H. Boyd, Jr.
 Alabama License Number: 53032



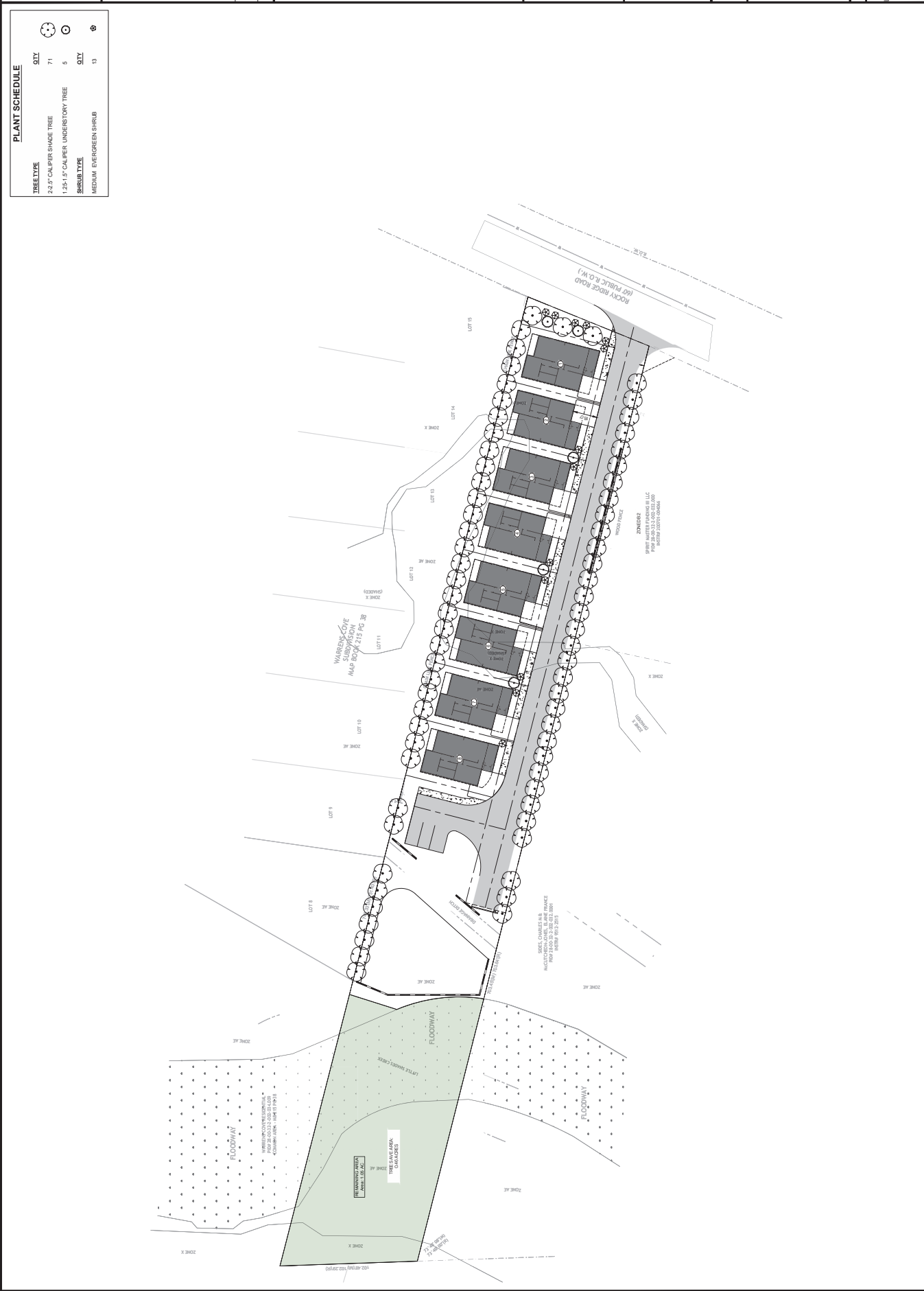
818
 LANDSCAPE ARCHITECTS

DESIGN TEAM
 DRAWN BY: JAM
 CHECKED BY: JAM
 DESIGNED BY: JAM
 SCALE: 1/8" = 1'-0"



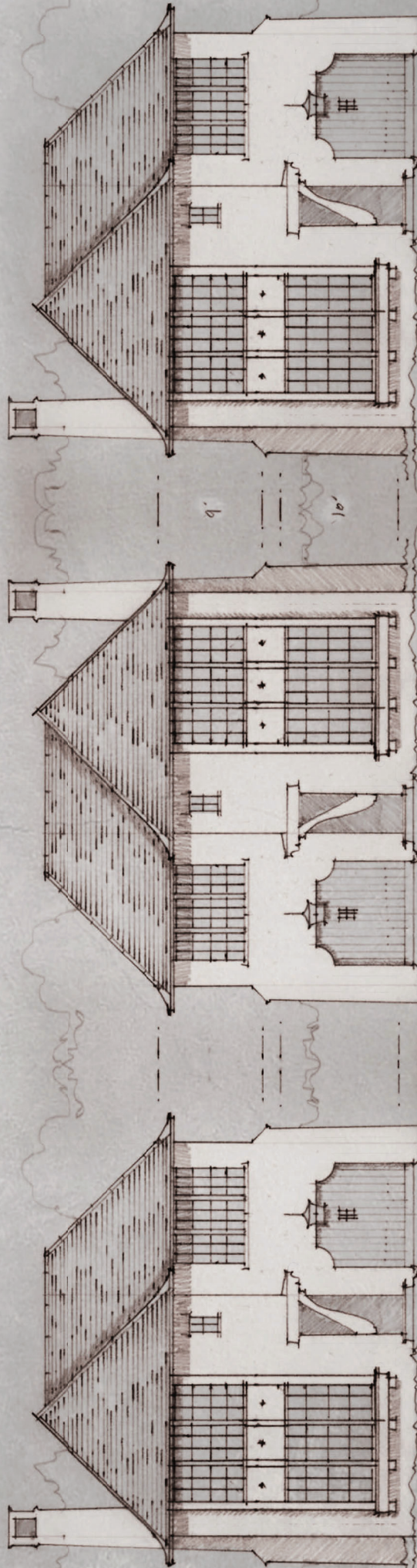
NORTH ARROW
 SCALE: 1" = 30'

SHEET NUMBER: 7/00/2025
 DATE: 7/00/2025
 SHEET TITLE: LANDSCAPE PLAN
 L-1.0





LONG & LONG
DESIGN



Entry Elevation

ROCKY RIDGE ROAD
VESTAVIA HILLS, ALABAMA



Zoning1	
PARCELID	2800322002033000
DISTRICT	001
ESN_NUM	504
PROPADD	2560 ROCKY RIDGE RD
TAX_TOWNSH	28
SECTION	32
OSECTION	2
BLOCK	002
PARCEL	0033000
VH_ZONING	
ZNG_ORD	
ZNG_ORD_DT	
ZNG_ORD2	

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS
FOR
BROOKHAVEN COTTAGES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the ____ day of September, 2025 by **Hartbrook Development LLC**, an Alabama limited liability company (the "Developer").

RECITALS:

WHEREAS, Developer is the owner of the Property, as described in Section 1.21 below, and desires to own, develop, improve, and sell the Property for residential and ancillary purposes, subject to certain easements, covenants, conditions, restrictions, requirements, and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property; and

WHEREAS, Developer has heretofore caused, or shall cause, the Association, as defined in Section 1.03 below, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the Common Areas, as defined in Section 1.07 below, establishing annual budgets for maintaining the Common Areas and paying all costs and expenses incurred by the Association in connection therewith, making Assessments, as defined in Section 1.02 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer and Consenting Owner does hereby declare that all of that certain real property situated in Jefferson County, Alabama, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference and referenced to as the Property herein, shall be held, developed, improved, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, covenants, conditions, restrictions, charges, liens, and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title, or interest in any portion of the Property described in Exhibit A attached hereto and any of the Additional Property, as described in Section 1.01 below (but only to the extent Developer submits any portion of the Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

ARTICLE I DEFINITIONS

As used throughout this Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.01 **Additional Property.** The term “Additional Property” shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Development) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.02 below. The Additional Property may also include additional Common Areas.

1.02 **Assessment.** The term “Assessment” shall mean the annual, special, and individual assessments and any other charges assessed against an Owner by the Association pursuant to Article VII hereof.

1.03 **Association.** The term “Association” shall mean BROOKHAVEN COTTAGES ASSOCIATION INC., an Alabama nonprofit corporation.

1.04 **Board.** The term “Board” shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Certificate of Formation and Bylaws.

1.05 **Bylaws.** The term “Bylaws” shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

1.06 **Certificate of Formation.** The term “Certificate of Formation” shall mean and refer to the Certificate of Formation of the Association and all amendments thereto.

1.07 **Common Areas.** The term “Common Areas” shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas shall include the Lots labeled “open space” on any recorded subdivision plat, as well as any other areas or Improvements on or within the Development which are designated as Common Areas by Developer from time to time. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses, or benefits therein or to the use thereof.

1.08 **Common Expenses.** The term “Common Expenses” shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 7.04(e) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.09 **Declaration.** The term “Declaration” shall mean and refer to this **Declaration of Covenants, Conditions, and Restrictions for Brookhaven Cottages**, and all amendments thereto.

1.10 **Developer.** The term “Developer” shall mean **Hartbrook Development LLC**, its successors and assigns.

1.11 **Development.** The term “Development,” with an initial capital letter, shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 2.02 hereof.

1.12 **Governmental Authority.** The term “Governmental Authority” shall mean any and all city, county, state, and federal governmental or quasi-governmental agencies, bureaus, departments, divisions, or regulatory authorities having jurisdiction over any portion of the Development.

1.13 **Improvement.** The term “Improvement,” with an initial capital letter, shall mean and refer to all Cottages, any building, structure, or device constructed, erected, or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Cottage, or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, foundations, covered patios, underground utilities, driveways, walkways, paving, curbing, parking areas, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Lot or Cottage. “Improvements” shall also mean any grading, any excavation, or fill, the volume of which exceeds eight (8) cubic yards.

1.15 **Institutional Mortgagee.** The term “Institutional Mortgagee” shall mean and refer to any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust, or other recognized lending institution which normally and customarily engages in the business of making mortgage loans and shall include any institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which holds a first mortgage on any Lot or Cottage which has been duly and properly recorded in the Probate Office of Jefferson County, Alabama.

1.16 **Lot.** The term “Lot” shall mean and refer to any portion of the Property which is identified as a lot on any subdivision plat recorded and that is subject to this Declaration. Upon the submission of any Additional Property, the lots making up the Additional Property shall be included in the definition.

1.17 **Mortgage.** The term “Mortgage,” with an initial capital letter, shall mean and refer to any mortgage, deed of trust, or other security device encumbering a Lot or Cottage or any interest therein and which shall have been duly and properly recorded in the Probate Office of Jefferson County, Alabama.

1.18 **Mortgagee.** The term “Mortgagee,” with an initial capital letter, shall mean and refer to the holder of any Mortgage and shall include any Institutional Mortgagee.

1.19 **Occupant.** The term “Occupant” shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees, and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees, and any other person who occupies or uses any Cottage within the Development. All actions or omissions of any Occupant are and shall be deemed the action or omission of the Owner of such Cottage.

1.20 **Owner.** The term “Owner,” with an initial capital letter, shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Cottage whether a corporation, limited liability company, partnership, proprietorship, association, or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Cottage at the foreclosure sale held with respect to the foreclosure of such Mortgage, or (ii) any lessee, purchaser, contract purchaser, or vendor who has an interest in any Lot or Cottage solely by virtue of a lease, contract, installment contract, or other agreement.

1.21 **Property.** The term “Property,” with an initial capital letter, shall mean and refer to that certain real property situated in Jefferson County, Alabama, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

1.22 **Subdivision Plat.** The term “Subdivision Plat” with an initial capital letter, shall initially mean and refer to the subdivision plat referenced in Exhibit “A” attached hereto and expressly incorporated herein by this reference.

1.23 **Cottage.** The term “Cottage” with an initial capital letter, shall mean and refer to Improvements constructed on any Lot which is intended to be used for residential dwelling.

ARTICLE II

PROPERTY SUBJECT TO THE DECLARATION

2.01 **General Declaration.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration and the Property, any part thereof and each Lot, Cottage, and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon, and otherwise used, improved, and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens, and regulations shall run with the land and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot, Cottage, and Common Area thereof.

2.02 **Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office of Jefferson County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant, or Mortgagee of any Lot or Cottage) and shall (a) refer to this Declaration stating the book and page number in the Probate Office of Jefferson County, Alabama, where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions, and restrictions as the Developer, in its sole discretion, shall specify to regulate and control the use, occupancy, and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Jefferson County, Alabama, submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Cottages within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot or Cottage within the Development. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions, or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented, or amended, in whole or in part, without the prior

written consent of Developer, and (2) the rights reserved by Developer pursuant to this Section 2.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 2.02 of this Declaration.

2.03 Mutuality of Benefit and Obligation. The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot and Cottage within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Cottage, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot or Cottage within the Development, and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors, and assigns.

2.04 Development of Property. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot in the Development, to make improvements and changes to all Common Areas and to all Lots or Cottages owned by Developer, including without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Cottages owned by Developer or of the Common Areas, and (iii) installation and maintenance of any water, sewer, and any other utility systems and facilities within the Common Areas.

2.05 Subdivision Plat. Developer reserves the right to record, modify, amend, revise, and otherwise add to, at any time and from time to time, the Subdivision Plat setting forth such information as Developer may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of all Lots, utility easements, drainage easements, access easements, and set back line restrictions. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide, redivide, combine and/or resubdivide any Lots owned by Developer.

ARTICLE III EASEMENTS

3.01 Grant of Nonexclusive Easements to Owners. Subject to the terms and conditions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Common Areas in common with Developer, and all other Owners and Occupants. The easement and rights granted pursuant

to this Section 3.01 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot and Cottage.

3.02 Reservation of Easements with Respect to Common Areas.

(a) Easement Upon Common Areas. Developer does hereby establish and reserve, for itself, the Association, and their respective agents, employees, contractors, representatives, invitees, successors, and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through, and upon all of the Common Areas for the purpose of (i) constructing Cottages and other Improvements in and to any Lots and Cottages, (ii) installing, maintaining, repairing, and replacing any other Improvements to the Property or to the Common Areas, and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own any portion of the Property, Developer hereby establishes and reserves for itself and its heirs and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to, and egress from and the right and privilege to use and enjoy the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate; provided, however, that Developer should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

(b) Changes in Common Areas. Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify, and realign the boundaries of any of the Common Areas. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

3.03 Reservation of Easement for Drainage and Utilities. Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through, and upon all portions of the Property which are reasonably necessary for the purpose of installing, routing, channeling, erecting, replacing, relocating, maintaining, and operating all waterflow and utilities necessary or convenient for the use of any portion of the Development, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water, and sewer services, storm drains and sewers, drainage systems, swales, water routing facilities, retention ponds, lines, pipes, conduits, equipment, machinery, and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide proper flow of water over the Property as well as any utility service to any portion of the Development. The easements

established and reserved herein shall include the right, but not the obligation, to cut and remove trees, undergrowth, and shrubbery, to grade, excavate, or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation, and replacement of all such utility services and the systems, equipment, and machinery used to provide the same. Notwithstanding anything provided in this Section 3.03 to the contrary, the utilization of any of the easements and rights established and reserved pursuant to this Section 3.03 shall not unreasonably interfere with the use or occupancy of any Cottage.

3.04 Reservation of Maintenance Easement. Subject to the terms and provisions of Section 6.02(b) below, Developer does hereby establish and reserve for the Association and its agents, employees, successors, and assigns a permanent and perpetual right and easement to enter upon any Lot or Cottage for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety, and appearance with the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

3.05 Reservation of Environmental Easement. Developer does hereby establish and reserve for itself, the Association, and their respective agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement on, over, across, and upon all Lots and all unimproved portions of any Cottage for the purpose of taking any action necessary to effect compliance with any watershed, soil erosion, or environmental rules, regulations, and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to take any other action which may be required in order to satisfy the requirements of any Governmental Authorities. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.03 shall not unreasonably interfere with the use or occupancy of any Cottage situated on any Lot.

3.06 Reservation of Sidewalk/Walkway Easement. Developer does hereby establish and reserve for itself, the Association, each Owner, and their respective agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement on, over, across, and upon all the sidewalks and walkways located on the Lots.

ARTICLE IV ASSOCIATION

4.01 **Membership.** The Owner of each Lot or Cottage shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Cottage; provided, however, that: (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Cottage owned by Developer in the Development; (b) in the event any Lot or Cottage is owned by more than one (1) person, then the Owner of such Lot shall, designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot or Cottage owned by such Owner; and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot or Cottage is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Cottage (other than by a Mortgage as security for the payment of an obligation) shall automatically include the transfer of all membership rights and obligations of such Owner in the Association with respect to the Lot or Cottage transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments, or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed, or otherwise alienated in any manner separate and apart from the ownership of a Lot or Cottage. Each member of the Association shall at all times comply with the provisions of this Declaration, the Certificate of Formation, the Bylaws, and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

4.02 **Board.** The Board shall have the rights and duties set forth in the Certificate of Formation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any portion of the Property. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Cottage, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.02.

4.03 **Voting Rights.** Subject to the rights reserved to Developer in the Certificate of Formation and Bylaws and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Section 10.01 below, the Owner of each Lot or Cottage shall be entitled to one (1) vote in any matters submitted to the members of the Association for approval. Such voting rights shall continue to apply to each Lot or Cottage upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other

conveyance to a Lot or Cottage, consents and agrees to the dilution of his voting interest in the Association by virtue of the resubdivision of any Lot by Developer or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or Cottage or otherwise, shall more than one vote be allowed for any one Lot or Cottage. Fractional voting shall not be permitted. For purposes of this Section 4.03, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots or Cottages owned by Developer.

4.04 Duties and Powers of Association. In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done, and otherwise perform or cause to be performed any of the duties and powers set forth in the Certificate of Formation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity, or inconsistency between the *Code of Alabama*, this Declaration, the Certificate of Formation, the Bylaws, or any rules and regulations adopted by the Association, then the provisions of the *Code of Alabama*, this Declaration, the Certificate of Formation, the Bylaws, and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot or Cottage, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity, or inconsistency. The powers of the Association shall include, but not be limited to, (i) the power to purchase one or more Lots and/or Cottages and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell, and otherwise convey the same, (ii) subject to the provisions of this Section 4.04, the right to own and hold title to any of the Common Areas, and Improvements located within or with on any Common Areas, as well as the right to borrow money for the purpose of acquiring additional Common Areas, for constructing, repairing, maintaining, or improving the Common Areas or any portion thereof or for providing any of the services authorized herein, (iii) subject to the provisions of this Section 4.04, the right to give Mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses, and options reserved or established herein for the benefit of Developer, the Association, and all Owners and Occupants, (iv) the right to grant and accept easements, (v) the right to dedicate or transfer fee simple title to all or any portion of the Common Areas to any Governmental Authority; provided, however, that except as provided in Section 8.03 below, the dedication or transfer of title to any of the Common Areas must be approved by a majority of those Owners present in person or by proxy at a duly held meeting of the Association

called for such purpose, and (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer, and/or security services for the Common Areas and/or the Lots and Cottages. For so long as Developer shall own any portion of the Property, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell, or otherwise convey any interest it may have in the Common Areas. Except as otherwise specifically provided to the contrary herein, in the Certificate of Formation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

4.05 Agreements. Subject to the conditions, restrictions, and other provisions of this Declaration, all agreements, actions, and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors, and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Certificate of Formation, or the Bylaws. Such manager may be an individual, corporation, or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Certificate of Formation, the Bylaws, or any rules and regulations of the Association.

4.06 Management by Developer or its Affiliates. Developer or any affiliate thereof may be employed as the manager of the Association and the Development for so long as Developer owns any portion of the Property, at such compensation and on such terms as would be usual, customary, and obtainable in an arms-length transaction with any third party providing comparable

services for any real estate development in the southeastern United States of the size, quality, and nature of the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Cottage, shall be deemed to ratify the provisions of this Section 4.06 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

4.07 Rules and Regulations. The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Cottages, and Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas, the enforcement of all of the terms and provisions of this Declaration, and any rules and regulations adopted by the Board and such other matters. Copies of such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, cancelled, or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, cancelled, or modified unless such action is also approved by Developer for so long as Developer owns any portion of the Property.

4.08 Indemnification. The Association shall and does hereby indemnify, defend, and agree to hold each and every officer, agent, representative, and member of the Board harmless from and against any and all expenses, including court costs and reasonable attorney's fees, suffered, paid, or incurred by any such officer, agent, representative, or member of the Board in connection with any action, suit, or other proceedings (including the settlement of any suit or proceedings if approved by the Board) to which such person may be made a party by reason of being or having been an officer, agent, representative, or member of the Board. The officers, agents, representatives, and members of the Board shall not be liable for any mistake in judgment, negligence, or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives, and members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall and does hereby indemnify, defend, and agree to forever hold each such officer, agent, representative, and member of the Board harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, agent, representative, or member of the Board may be entitled, including anything provided to the contrary contained in the Certificate of Formation or the Bylaws. The Association shall maintain adequate general liability insurance and officers and director's liability insurance in order to fulfill its obligations under this Section 4.08 and the costs of such insurance shall constitute a Common Expense.

4.09 **Initial Contribution.** Each Owner shall pay an initial contribution to the Association in the amount of **One Thousand Dollars (\$1,000.00)** upon the transfer or purchase of a Lot or Cottage. This initial contribution shall be paid upon the transfer or sale of a Lot or Cottage by the transferee or purchaser, as the case may be, of the Lot or Cottage. This initial contribution is in addition to the Assessments described herein.

ARTICLE V ARCHITECTURAL STANDARDS

5.01 The Development is intended to remain harmonious as to landscaping and design of all Cottages and other Improvements on any Lot, including the color scheme, finish, proportions, and style of architecture. Accordingly, no improvement may be constructed on any Lot and no alterations or additions may be made to any Cottage without the prior written consent of the Board. In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees, or contractors of any Owner or Occupant, then the Association shall have the right, at their option, to (a) enjoin any further construction on any Lot and require the removal or correction of any work in place which does not comply with the provisions hereof or plans and specifications approved by the Association for such alteration and/or (b) through their designated agents, employees, representatives, and independent contractors, enter upon such Lot and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners, and any other persons involved in the correction of nonconforming work, the completion of uncompleted work, or in any judicial proceeding, together with any other costs or expenses incurred by the Association in causing any Owner or such Owner's contractors, agents, or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Association may exercise at law or in equity or any of the enforcement rights specified herein.

5.02 **Use Restrictions.** Except as otherwise provided to the contrary herein, each Lot and Cottage shall be used for single-family residential purposes only and no trade or business of any kind may be carried on in or from any Lot or Cottage; provided, however, that Developer may maintain and carry on such activities as may be reasonably required, convenient, or incidental to

the construction, improvement, and sale of Lots and/or Cottages. The use of any portion of a Cottage as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client, or employee traffic. The leasing or rental of a Cottage for residential purposes only shall not be considered a violation of this covenant.

5.03 Underground Utilities. All utility lines, pipes, conduits, and wiring for electrical, gas, telephone, water, sewer, cable television, security, and any other utility service for any portion of the Property shall be installed and maintained below ground. Notwithstanding the foregoing, the electrical power lines of Alabama Power Company to the transformers may be located above ground and on power poles.

5.04 Landscaping. The Association shall maintain all landscaping and sidewalks within the Development, and no Owner or Occupant may plant additional flowers, trees, bushes, hedges or shrubbery planting, nor any vegetable, herb, or similar gardens, without the prior written consent of the Association. Notwithstanding the foregoing, each Owner shall be required to replace any flowers, trees, bushes, hedges or shrubbery located on a Lot that is dead or diseased. No bird baths, fountains, reflectors, flagpoles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses, or other fixtures and accessories shall be placed or installed within any Lot, unless approved by the Association. Seasonal or holiday decoration (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot as soon as such holiday passes. The Association shall install, maintain and pay the expenses of an irrigation system for all landscaping within the Development.

5.05 Roofing. Maintenance and replacement of the roofing shingles of each Cottage shall remain uniform, and no Owner or Occupant shall alter same without the prior written consent of the Association. Repair or replacement of roofing shingles shall conform to existing roof. No projection of any type, including but not limited to solar or other energy collection panel, equipment, or device, shall be installed or maintained on any Lot, including, without limitation, the roof of any Cottage without the prior written consent of the Association.

5.06 Exterior Lighting. Replacement of exterior light bulbs are the responsibility of Owners of a Lot or Cottage, however, no additional exterior lighting for any Cottage, including without limitation, free standing lighting and utility (e.g., flood) lights, may be installed, without the prior written consent of the Association.

5.07 Exterior Materials and Finishes. The exterior building material and finishes for each Cottage in the Development are intended to remain harmonious. Accordingly, no change may be made to any exterior colors, including, without limitation, the color of roof shingles, brick, stone, stucco, wood, trim, cornices, eaves, railings, doors, and shutters without the prior written consent of the Association.

5.08 **Parking.** All automobiles owned or used by the Owner or Occupant of any Cottage and their respective family members shall be parked within the parking area depicted on the Subdivision Plat. Each Lot shall have at least 2 parking spaces to ensure adequate parking for Owners and Owner's temporary guests and invitees. There shall be no on-street parking. Guest parking is available at the end of the Private Drive. No Owner's temporary guests may leave their vehicle parked in a guest parking space for more than two days. The Board shall have the right from time to time to promulgate rules and regulations governing parking within the Development, including the right to assess fines for violations of such rules and regulations.

5.09 **Fences.** Fences shall be permitted only as approved by the Board. No fences shall be allowed in front yards. If fencing is approved it must be of the type of material (including the color thereof) and located as authorized by the Board. As it is intended that no Lot or any portion thereof will be enclosed, no fence shall be constructed on any Lot without the prior written approval of the Association.

5.10 **Windows, Window Treatments, and Doors.** The Developer intends to construct each Cottage with uniform doors and windows, which will provide a harmonious design within the Development, and no alteration or replacement thereof shall be permitted without the prior written approval of the Association. No burglar bars, screen doors or metal doors with glass fronts (e.g. storm doors) may be installed without the prior written consent of the Association. Reflective glass shall not be permitted on the exterior of any Cottage, and no foil or other reflective material shall be installed on any windows or used for sunscreens, blinds, shades, or other purposes. Appropriate window treatments shall be used on all windows and the view of same from the exterior of the Cottage must be neutral color (e.g. white, off-white, cream). Sheets, bed linens, blankets, and paper or plastic bags are not appropriate window treatments.

5.11 **Mailboxes.** The initial mailbox shall be provided by the Developer and contain only the address of the Lot. Any replacement mailbox is the responsibility of the Owner and shall be identical to the initial mailbox supplied by the Developer in all respects and requirements, including location thereof, unless otherwise approved by the Association.

5.12 **Utility Meters and HVAC Equipment.** All electrical, gas, telephone, and cable television meters, to the extent practicable, shall be located at the rear of all Cottages. All exterior heating, ventilating, and air conditioning compressor units and equipment shall be located, to the extent practicable, at the rear of a Cottage and no window mounted heating or air conditioning units or window fans shall be permitted.

5.13 **Satellite Dishes and Antennae.** No satellite, radio antenna, radio receiver, or other similar device or aerial shall be attached to or installed on any Lot or any other portion of the Development, unless the type and location of same is approved by the Association.

5.14 Outdoor Furniture, Recreational Facilities, and Clotheslines. No furniture, children's toys, swing sets, jungle gyms, trampolines or other recreational equipment shall be placed, kept, installed, maintained, or located in or on the front yards of any Lot. Basketball backboards shall not be affixed to the Cottage without the prior written consent of the Association. Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot. No clothing, rugs, or other items shall be hung or allowed to remain on any railing, fence, or wall.

5.15 Pets and Animals. No animals, livestock, birds, or poultry of any kind shall be kept, raised, or bred by any Owner upon any Lot, Cottage, or other portion of the Development; provided, however, that not more than two (2) dogs or cats (or a combination of one dog and one cat) may be kept and maintained on a Lot so long as they are not kept for breeding or commercial purposes. The limitation on the number of animals in the preceding sentence shall apply to unattended animals kept outside of the Cottage. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure or area for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Lot without the prior written consent of the Association, as to size, type and location. Each Owner shall be liable to the Association for the costs of repairing any damage to the landscaping within the Development caused by the pet or animal of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing keeping pets within the Development, including the right to assess fines for violations of such rules and regulations.

5.16 Trash, Rubbish, and Nuisances.

(a) No trash, garbage, rubbish, or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Cottage which would render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using, occupying, or owning any other Lots or Cottages within the Development. Noxious or offensive activities shall not be carried on, in or from any Lot or Cottage or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot or Cottage which would cause disorderly, unsightly, or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Development or be in violation of any law, statute, ordinance, rule, regulation, or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed upon any Lot or Cottage or other portion of the Development. Any Owner or Occupant or any of the respective family members, guests, invitees, servants, agents, employees,

or contractors of such Owner or Occupant who dumps, places, or allows trash or debris to accumulate on his Lot, Cottage, or on any other portion of the Development shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage, and any other refuse or waste shall not be kept on any Lot or Cottage except in sanitary containers. Trash cans and containers shall at all times be kept at the side of or inside a Cottage and shall be screened from view from streets and adjacent Lots and Cottages by appropriate landscaping or fencing. On trash collection days, each Owner or Occupant of a Cottage shall be required to take their trash container to a common location established by the Developer at the end of the street on which the Cottage is located for collection. Said Owner or Occupant of a Cottage must retrieve the trash container and return the same to the Cottage within twenty-four (24) hours of the trash collection.

5.17 Recreational Vehicles and Machinery and Equipment.

(a) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, motorized carts and all-terrain vehicles, lawn mowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery, or equipment shall not be stored or allowed to remain on any Lot or Cottage unless the same is placed, stored, and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot or Cottage. The Common Areas shall not, unless expressly permitted by the Association, be utilized for the storage of any of the foregoing vehicles, recreational vehicles, machinery, or equipment.

(b) Each Lot contains adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot). Vehicles shall not be parked on any landscaped or natural areas of a Lot. Roadside or street side parking is prohibited.

(c) Any vehicle which is inoperable shall be immediately removed from the Development. No Owner or Occupant shall repair or restore any vehicle, machinery, or equipment of any kind upon or within any Lot or Cottage or within any portion of the Common Areas, except (i) for minor service work or emergency repairs and then only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside of the Development.

(d) The Board shall have the right at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use, or maintenance of mobile homes, tractors, equipment, machinery, trailers (with or without wheels), motor homes, trucks (other than pick-up trucks), commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles, motorized go-carts, and other forms of transportation.

5.18 **Signage.** No signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any Lot or Cottage or elsewhere on any portion of the Property. Notwithstanding the foregoing (a) the restrictions set forth in this Section 5.20 shall not be applicable to Developer or to any signs erected during the construction of any Cottage on a Lot, and (b) Developer and the Association shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established in Article III above. Developer may display such signs as it deems necessary and appropriate to promote the development and sales of the Cottages therein, and provided further that one “for rent” or “for sale” sign may be placed on the Lot without permission from the Association.

5.19 **Above Ground Tanks and Wells.** No exposed above-ground tanks for the storage of fuel, water, propane or any other substances shall be located on any Lot or Cottage or within any of the Common Areas. No private water wells may be drilled or maintained.

5.20 **Temporary Structures.** No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, tree house, or other outbuilding or structure of any kind shall be permitted, constructed, installed, or allowed to remain on any Lot or Cottage; provided, however, that the foregoing shall not be deemed to prohibit temporary structures for social functions as may be permitted by the rules and regulations of the Board.

5.21 **Compliance with Governmental Regulations.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements, and code provisions of the Governmental Authorities.

5.22 **Additional Regulations.** In addition to the restrictions set forth in this Declaration, the (a) Board shall have the right, in its sole discretion, from time to time and at any time to adopt additional or more specific requirements and restrictions governing the Improvement and use of any Lot or Cottage, and (b) the Board shall have the right from time to time and at any time to adopt, modify, and amend such rules and regulations as the Board, in its sole discretion, determines to be in the best interests of all Owners, which rules and regulations shall be binding on all Owners, Lots, and Cottages.

5.23 **Variances.** The Association, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article V above and this Article VI with respect to any Lot. Any variance request submitted to the Association shall be in writing.

5.24 **Enforcement and Remedies.** In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees, or contractors of any Owner

or Occupant, then the Association shall have the right, at its option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives, and independent contractors enter upon such Lot and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners, and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the Association in connection therewith (i) shall be paid by such Owner who has violated or breached any of the provisions of this Article V, (ii) shall constitute an individual Assessment to such Owner pursuant to Section 7.06 below and, (iii) if the same is not paid when due, shall be subject to the lien provided for in Section 7.09 below, and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Association may exercise at law or in equity or any of the enforcement rights specified herein.

ARTICLE VI RESPONSIBILITIES

6.01 Responsibilities of Owners.

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots, Cottages, and all Improvements situated thereon or therein shall be the responsibility of the Owner. Each Owner shall be responsible for maintaining his or its Lot or Cottage, as the case may be, in a neat, clean, and sanitary condition, both inside and outside of any Cottages or Improvements thereto; provided, however, that no exterior changes, alterations, or Improvements shall be made to any Lot or Cottage without first obtaining the prior written approval of the same from the Association.

(b) No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Cottage or the landscaping, grounds, or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the Association or (ii) do any work which, in the reasonable opinion of the Association would jeopardize the soundness and safety of any other Cottage within the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every case obtaining the prior written approval of the Association.

6.02 Responsibilities of Association.

(a) Except as may be otherwise provided herein to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments be responsible to maintain and keep in good repair and condition all portions of the Common Areas, maintain and keep in good repair and condition the sidewalks in the Development, and maintain landscaping of each Lot. Said responsibility shall include only the maintenance of the landscaped areas, including all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon any Lot. Each Owner shall be responsible for the replacement of any lawns, trees, shrubs, hedges, grass, and other landscaping that is dead or diseased, with any replacement being approved by the Board. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, act of God, or any Owner or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any landscaped area maintained by the Association, or (3) resulting from thief, burglary, or other illegal entry onto any Lot. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities..

(b) In the event that the Board of the Association determines that (i) any maintenance, cleaning, repair, or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees, or contractors, and the costs of such maintenance, cleaning, repair, or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair, or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner, and shall be subject to the lien and foreclosure rights granted pursuant to Section 7.09 below.

ARTICLE VII ASSESSMENTS

7.01 Assessments and Creation of Lien. Each Owner of a Lot or Cottage (other than Developer), by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association the following, which are collectively referred to herein as “Assessments”: (a) the annual assessment of the Association for the Development, as established and to be collected as provided in Section 7.04 below, (b) special assessments, to be established and collected as provided in Section 7.05 below, and (c) individual assessments against any particular Lot or Cottage which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot or Cottage in accordance with the provisions herein. All Assessments, together with late charges and interest as provided in Section 7.09(a) below, and all court costs and attorneys’ fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot or Cottage for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 7.09(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot or Cottage and his grantee shall take title to such Lot or Cottage subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as defined in Section 7.09(a) below, court costs, and attorneys’ fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Lot or Cottage at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Cottage, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution, or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof with respect to any Lot, Cottage, Common Areas, or any other portion of the Development.

7.02 Purpose. The annual and special assessments provided for herein shall be used for the general purposes of promoting the safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Development and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Common Areas and any Improvements thereto, all as may be more specifically authorized from time to time by the Board.

7.03 Uniform Rate of Assessments.

(a) Both annual and special assessments, as described in Sections 7.04 and 7.05 below, shall be assessed against each Lot in the Development at a uniform rate, with the Owner of each Lot being required to pay his pro rata portion of such annual and/or special assessments, as determined by a fraction, the numerator of which shall be the total Lots owned by such Owner and the denominator of which shall be the total number of Lots in the Development at the time such annual or special assessment is levied. Each Lot shall be subject to equal annual and special assessments.

(b) Notwithstanding anything provided in Section 7.03(a) above to the contrary, in the event any Additional Property is added to the Development, then the Lots within the Additional Property shall be subject to the same annual or special assessments then being paid by the Owners of all other Lots in the Development, subject to proration as provided in Section 7.08 below.

7.04 Computation of Annual Assessments.

(a) Notwithstanding anything provided to the contrary in this Declaration, the initial annual assessment for each Lot in the Development shall be **One Thousand Five Hundred Dollars and No/100 Dollars (\$1,500.00)**. The foregoing shall not limit or restrict any special Assessments levied pursuant to Section 7.05 below (with the approval of a majority of the Owners as provided therein) or any individual Assessments levied in accordance with the provisions of Section 7.06 below.

(b) Commencing with the fiscal year of the Association beginning on January 1, 2024 (i.e., from January 1, 2024 through December 31, 2024 which period is hereinafter referred to as the "Base Year") and annually thereafter, the Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the Development for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his pro rata share of the same as provided in Section 8.03 above. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots and Cottages for the following year shall be delivered to each Owner.

(c) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of annual Assessments the increase of which exceed (without regard to proration or adjustment as provided in Section 7.08 below) the greater of either (i) ten percent (10%) of the annual Assessments payable for the entire immediately preceding calendar year or

(ii) the percentage increase in the United States Consumer Price Index or any successor index thereto for January of the current year over the index for January of the Base Year then the budget and the amount of the annual Assessments shall be presented for approval of the Owners at the annual meeting of the Association and must be approved by the vote of a majority of the Owners who are voting in person or by proxy at such meeting. In the event the amount of the annual Assessments does not exceed the limitations set forth above or until such time as a majority of the Owners have approved such increase in the amount of the annual Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in annual Assessments.

(d) If any budget or the amount of annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving special Assessments as provided in Section 7.07(b) below. If the actual amount of annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years Common Expenses.

(e) The Common Expenses to be funded by the annual Assessments may include, but shall not be limited to, the following:

(i) Salaries, fringe benefits, and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board, and any third-party contractors;

(ii) Management fees and expenses of administration, including legal and accounting fees, incurred by the Association;

(iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Development;

(iv) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood, and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors and officers liability insurance, and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents, or representatives of the Association;

(v) The expenses of maintaining, operating, repairing, and replacing any

portions of the Common Areas for which the Association is responsible;

(vi) All other fees, costs, and expenses incurred by the Association in accordance with the terms and provisions of this Declaration or which the Board, in its sole discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots or Cottages; and

(vii) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair, and replacement of any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair, or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board; and

(viii) The maintenance, repair, and replacement of all landscaped areas, including all lawns, water for all lawn irrigation, shrubs, hedges, grass, and other landscaping situated within or upon any Lot.

7.05 Special Assessments. In addition to the annual Assessments authorized in Section 7.04 above and the special Assessments authorized in Sections 8.01(b) and 8.03(a)(i) below, the Board of the Association may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments (other than special assessments levied pursuant to Sections 8.01(b) and 8.03(a)(i) below) shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments pursuant to the provisions of Section 7.07 below. The Board may make such special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 7.03 above.

7.06 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees, or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots or Cottages. The individual assessments provided for in this Section 7.06 shall be levied by the Board and the

amount and due date of such assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 7.06 shall apply, without limitation, to any individual assessments levied pursuant to any other provision hereof.

7.07 Notice of Meetings and Quorum.

(a) Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized in this Article VII shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of such meetings. With respect to annual meetings, the presence in person or by proxy of Owners entitled to cast over 50% of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitled to cast at least one-third ($\frac{1}{3}$) of the total votes of the Association. At such time as a quorum is obtained, the vote of a majority of the Owners who are voting in person or by proxy at such meeting shall be required to approve any matter in which all of the members of the Association are entitled to vote, including any increase in the amount of annual Assessments in excess of the limitations specified in Section 7.04(c) above.

(b) With respect to all other meetings of the members of the Association, including, specifically, meetings pursuant to which special Assessments are to be levied upon each Lot or Cottage pursuant to Section 7.05 above, there shall be no specific requirement establishing a quorum and the vote of a majority of the Owners who are voting in person or by proxy at any such special meeting shall be binding on all of the members of the Association.

7.08 Date of Commencement of Assessments. The annual Assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Developer. The annual Assessment shall be prorated for the year based on the day on which the Lot or Cottage is conveyed to a person other than the Developer according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot or Cottage is conveyed, and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board of the Association. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of Assessments on any Lots which it owns in the Development.

7.09 Effect of Non-Payment; Remedies of the Association.

(a) Each Owner of a Lot or Cottage is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. In the event any Assessments or any portion thereof are not paid when due the same shall be subject to a late charge in an amount

determined and uniformly applied by the Board from time to time and the Owner of such Lot or Cottage shall be deemed in default herewith. In the event any Assessment or any portion thereof is not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessment shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner shall be required to pay all attorneys' fees, court costs, and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot or Cottage for Assessments as provided above shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments or other amounts due to the Association are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments, and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 7.09(a) above, together with attorneys' fees, court costs, and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 7.01 above in the manner hereinafter provided.

(iii) The Association may revoke access to the pool, clubhouse and amenities area.

(c) There is hereby created a continuing lien on each Lot and Cottage, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Cottage, all late charges and interest at the Applicable Rate assessed pursuant to Section 7.09(a) above and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in collecting any Assessments. If any Assessments remain unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute

a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Cottage of such delinquent Owner, which claim shall be executed by any member of the Board or any officer of the Association, containing the following information, and be recorded in the Probate Office of Jefferson County, Alabama:

- (i) The name of the delinquent Owner;
- (ii) The legal description and street address of the Lot or Cottage upon which the lien claim is made;
- (iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs, and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and
- (iv) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot or Cottage in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than those Owners in default), and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey, and sell any such Lot or Cottage. Each Owner, by acceptance of a deed to any Lot or Cottage, shall be deemed to (1) grant to and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein, and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

7.10 Subordination of Lien. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot or Cottage in the Development is and shall be subordinate to the lien of any Mortgage held by an Institutional

Mortgagee, but only to the extent that the Mortgage held by any such Institutional Mortgagee is recorded in the Probate Office of Jefferson County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 7.09(c) above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Cottage, then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office of Jefferson County, Alabama, prior to the filing of a claim of lien by the Association pursuant to Section 7.09(c) above, but (b) be liable for all Assessments and other charges levied, assessed, or incurred with respect to such Lot or Cottage from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Cottage has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed, or incurred by the Association, and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Lot or Cottage.

7.11 **Certificates.** The Association or any officer or authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

ARTICLE VIII

CASUALTY, CONDEMNATION, AND INSURANCE

8.01 **Damage or Destruction to Lots and Cottages.** In the event of any fire or other casualty which damages or destroys any portion of any Lot or any Improvement thereon, then the Owner of such damaged Lot or Improvement shall promptly repair and otherwise restore such Lot or Improvement to the condition to which the same existed immediately prior to such fire or other casualty. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty.

8.02 **Condemnation of Lots or Cottages.** In the event that all or any portion of a Lot is taken as a result of, in lieu of, or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot shall promptly repair, reconstruct, rebuild, and otherwise restore the remaining portions of the Lot as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and

conditions set forth herein and all then applicable rules, regulations, statutes, and ordinances of the Governmental Authorities. In the event the restoration of such Lot is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe, and sightly condition.

8.03 Damage or Destruction to Common Areas.

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article VIII, the Association shall promptly repair, replace, and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire or other casualty.

(b) Notwithstanding anything provided in Section 8.04(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace, and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 7.05 and 7.07 above, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace, or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Such special Assessments shall be levied against each Owner equally as provided in Section 7.03 above. Further special Assessments may be made by the Board, without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon completion of any such repair, replacement, or restoration of the Common Areas if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Mortgagee of any Lot or Cottage be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

8.04 Condemnation of Common Areas.

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of, or in anticipation of the exercise of the right of eminent domain,

condemnation, or by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board of the Association is hereby empowered, authorized, and directed to take such action, including the purchase of any remaining lands within the Development or the utilization of any other Common Areas within the Development, to restore, rebuild, or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy a special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 7.05 and 7.07 above, which such special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration, or reconstruction. Such special Assessments shall be levied against each Owner as provided in Section 7.03 above. Further special Assessments may be made by the Board without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon the completion of any such repair, replacement, or restoration of the Common Areas if the award received as a result of such taking is insufficient to pay the costs of such repair or restoration.

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands within the Development cannot be purchased by the Association in order to repair, replace, or restore the Common Areas so taken or if the Board shall determine that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 8.05(c) below, no Owner or Mortgagee of any Lot or Cottage shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

(c) If such taking or sale in lieu thereof includes all or any part of a Lot or Cottage and also includes any part of the Common Areas, then the award from such taking shall be equitably apportioned in accordance with the decision of a court of competent jurisdiction and such award shall be disbursed separately to the Association and to the Owners so affected by such

taking; provided, however, that the Owners of any Lot or Cottage which is subject to any such taking and the Board may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

8.05 Insurance.

(a) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title, and all other types of insurance with respect to his Lot and Cottage. The Board may require all Owners to carry public liability insurance with respect to their respective Lots and Cottages and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, does hereby waive and release Developer, the Association, the Board, and their respective agents, employees, representatives, partners, shareholders, members, officers, and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

(b) The Board shall have the authority to obtain and maintain in effect at all times such public liability insurance coverage covering any damage or injury caused by the negligence of the Association, its Board, and all members, officers, agents, and employees thereof, in such amounts, with such insurance carriers, at such costs, and with such deductibles as the Board, in its sole discretion, may deem necessary or desirable.

(c) The Board shall have the right and authority to obtain workman's compensation insurance, employer's liability insurance, and all other types of insurance required by law, including, without limitation, errors and omissions and directors and officers liability insurance coverage, in such amounts, with such insurance carriers, at such costs, and with such deductibles as the Board, in its sole discretion, may determine.

(d) The cost of insurance coverage authorized hereunder and written in the name of the Association shall be a Common Expense. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Association, the members of the Board, and all officers, agents, and employees of the Association.

ARTICLE IX TERM AND AMENDMENTS

9.01 Term. The terms, covenants, conditions, and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors, and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after thirty (30) years from the date hereof, an agreement executed by the Owners of at least two-thirds ($\frac{2}{3}$) or more of the Lots or Cottages within the Development agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Jefferson County, Alabama; provided, however, that the rights of way and easements established, granted, and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

9.02 Amendment by Developer. For so long as Developer owns any portion of the Property, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Jefferson County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 9.04 below, (a) in the event any amendment proposed by Developer materially and adversely affects the title to any Lot or Cottage not owned by Developer, then such amendment shall be valid only upon the written consent thereto of the Owner of such Lot or Cottage affected thereby, or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagee(s) affected thereby. Any amendment made pursuant to this Section 9.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Jefferson County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot or Cottage, and each Mortgagee, by acceptance of a Mortgage on any Lot or Cottage, agrees to be bound by all amendments permitted by this Section 9.02 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule, or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Cottages, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or Cottage, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Cottages within the Development.

9.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 9.02 above, shall be proposed and adopted by the Association in the

following manner:

(a) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds ($\frac{2}{3}$) of the total votes in the Association; provided, however, that (i) any amendment which materially and adversely affects the security, title, or interest of any Institutional Mortgagee must be approved by such Institutional Mortgagee, (ii) during any period in which Developer owns any portion of the Property, then Developer must approve such proposed amendment, and (iii) to the extent the proposed amendment affects any of the matters described in Section 9.04 below, then the provisions of Section 9.04 below shall be applicable to such proposed amendment.

(b) Any and all amendments which have been approved in accordance with the provisions of Section 9.03(a) above shall be executed by all parties whose consent to the same is required, including the Owners holding at least two-thirds ($\frac{2}{3}$) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Jefferson County, Alabama.

9.04 Restrictions on Amendment. Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to any provisions of this Declaration which require Developer's consent or approval be effective unless the same is consented to in writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of Developer, with or without any reason.

ARTICLE X ENFORCEMENT

10.01 Authority and Enforcement. In addition to all other rights contained in this Declaration, in the event any Owner or Occupant or their respective agents, contractors, or invitees violates any of the provisions of this Declaration, the Certificate of Formation, the Bylaws, or any rules and regulations adopted by the Board from time to time, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and Cottage and shall be a personal obligation of such Owner which is guilty of such violation, (ii) suspend an Owner's right to vote in the Association, or (iii) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests, and

tenants) to use any of the recreational facilities located in or upon the Common Areas, and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

10.02 Procedure. In the event any of the terms or provisions of this Declaration, the Certificate of Formation, the Bylaws, or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors, or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights pursuant to Section 10.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

- (a) The alleged violation;
- (b) The action required to abate such violation; and
- (c) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Certificate of Formation, the Bylaws, or any of the rules and regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 10.01 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

10.03 Nonexclusive Remedies. Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement, and procedural rights set forth in this Article X are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

ARTICLE XI MISCELLANEOUS PROVISIONS

11.01 Control by Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE CERTIFICATE OF FORMATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.02

ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot or Cottage, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 11.01 and the provisions of Section 4.02 above. At such time as Developer no longer owns any interest in any portion of the Property, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Developer shall deliver all books, accounts, and records of the Association, if any, which Developer has in its possession.

11.02 Legal Expenses. In addition to all other rights and remedies set forth herein, in the event the Board, its agents and representatives, undertake any legal or equitable action which either of them deem necessary to abate, enjoin, remove, or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by either of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants, or conditions of this Declaration shall be paid for by the Owner against whom such action was initiated. The Board, its agents and representatives, are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any such violation or breach or to otherwise seek monetary damages as a result of any expenses incurred by the Association to cure such violation or breach.

11.03 Severability. If any provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

11.04 Captions and Headings. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration.

11.05 Pronouns and Plurals. All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

11.06 Binding Effect. The terms and provisions of this Declaration shall be binding upon each Owner, Occupant, and Mortgagee and the respective heirs, executors, administrators, personal representatives, successors, and assigns of each Owner, Occupant, and Mortgagee, and shall inure to the benefit of Developer, the Association, all of the Owners, and their respective

Mortgagees and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

11.07 Conflict or Ambiguity. In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

11.08 No Reverter. No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

11.09 Interpretation. In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

11.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of Developer, the Association, the Owners, and their respective Mortgagees, and by such recording, no other adjoining property owner or third party shall have any right, title, or interest whatsoever in the Development or its operation and continuation, in the enforcement of any of the provisions of this Declaration, or the right to consent to or approve any amendment or modification to this Declaration.

11.11 No Trespass. Whenever the Association or Developer, or their respective agents, employees, representatives, successors, and assigns are permitted by this Declaration to enter upon or correct, repair, clean, maintain, or preserve or do any other action within any portion of a Lot or Cottage, the entering thereon and the taking of such action shall not be deemed a trespass.

11.12 No Partition. Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Development.

11.13 Reservation of Rights. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance, or other hypothecation of any Lot or

Cottage by Developer to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer is transferring to any such third party.

11.14 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Cottage within the Development. All notices to the Association shall be delivered or sent in care of Developer to the following address:

Hartbrook Development LLC
2 North Jackson Street, Suite 605
Montgomery, AL 36104

or to such other address as the Association may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the above address or to such other addresses as Developer may notify the Association.

11.15 Assignment. Subject to the provisions of Section 11.13 above, Developer shall have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations, and duties as Developer.

11.16 Further Assurances. Each Owner covenants and agrees to execute, sign, and deliver, or cause to be executed, signed, and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts, or things, supplemental, conformity, or otherwise, which may be reasonably requested by Developer or the Association for the purpose of or in connection with clarifying, amending, or otherwise consummating any of the transactions and matters herein.

11.17 No Waiver. All rights, remedies, and privileges granted to Developer and to the Association pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of such rights, remedies, or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies, or privileges as may be available to such party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce

such covenant or restriction.

IN WITNESS WHEREOF, Developer has caused this Declaration to be duly executed as of the day and year first above written.

HARTBROOK DEVELOPMENT LLC

By: Brandon Hays
Its: Manager

STATE OF ALABAMA
COUNTY OF JEFFERSON

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Brandon Hays, whose name as Manager of Hartbrook Development LLC is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Manager and with full authority, executed the same voluntarily for and as act of said limited liability company, on the day the same bears date.

Given under my hand and official seal, this the ____ day of _____, 2024.

SEAL

Notary Public
My commission expires:

Prepared by:
Richmond B. Gunter
MUNCIE, MATTSON & GUNTER, P.C.
987 Drew Lane
Post Office Box 3208
Auburn, Alabama 36831-3208
(334) 821-7301

EXHIBIT “A”

LEGAL DESCRIPTION



**CITY OF VESTAVIA HILLS
CITY CLERK
INTER-DEPARTMENT MEMO**

October 13, 2025

To: Jeff Downes, City Manager

From: Rebecca Leavings, City Clerk

Cc:

RE: Public Hearing - Ordinance Number 3291 - Annexation - 90-day final - 2560 Rocky Ridge Road; Hartbrook Development, Brandon Hays, representing

Background:

This ordinance represents the 90-day final annexation of this property and will only be considered if the rezoning request in Ordinance 3290 is approved.

Recommendation:

na

Fiscal Impact:

na

Attachments:

1. Ordinance 3291

ORDINANCE NUMBER 3291

**ANNEXING CERTAIN TERRITORY TO THE
CORPORATE LIMITS OF THE CITY OF VESTAVIA
HILLS, ALABAMA.**

WHEREAS, on the 14th day of July, 2025, a petition was presented to the City Council of the City of Vestavia Hills, Alabama, proposing the annexation of certain property to the City of Vestavia Hills, Alabama, under the provisions of Act 32 of the Special Session on the Alabama Legislature of 1964; and

WHEREAS, the City Council of the City of Vestavia Hills, at the time and place of its regular meeting on said date, made a determination that the matters contained in the Petition were true and that it was in the public interest that said property be annexed to the City of Vestavia Hills, Alabama.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows:

1. That the following property which was described in said petition be annexed to the City of Vestavia Hills, Alabama:

2560 Rocky Ridge Road
Hartbrook Development LLC, Owner(s)

More particularly described as follows:

Beginning at the NW corner of the NE $\frac{1}{4}$ of the Nw $\frac{1}{4}$ of Section 32, Township 18 South, Range 2 West in Jefferson County, Alabama, run South along West line of said quarter-quarter section 997.78 feet to the point of beginning, thence run South along said West line 102.29 feet, thence turning an angle to the left of 73 degrees 40' and run Southeasterly 703.64 feet to an intersection with the Westerly line of Rocky Ridge Road, said point of intersection being 25' West of the center line of said road, thence turning an angle to the left of 79 degrees 2' and run Northeasterly along said westerly line of said road 100 feet; thence turning an angle to the left of 100 degrees 48' and run Westerly 751.43 feet to the point of beginning.

2. That this Annexation shall become effective upon the adoption and approval of this Ordinance in accordance with the provisions of law, after which the heretofore described property shall become a part of the City of Vestavia Hills, Alabama.

3. That the City Clerk be and is hereby directed to publish this Ordinance in accordance with the requirements of the law and to file a copy hereof with the Probate Judge of Jefferson County, Alabama.

ADOPTING and APPROVED this the 17th day of October, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

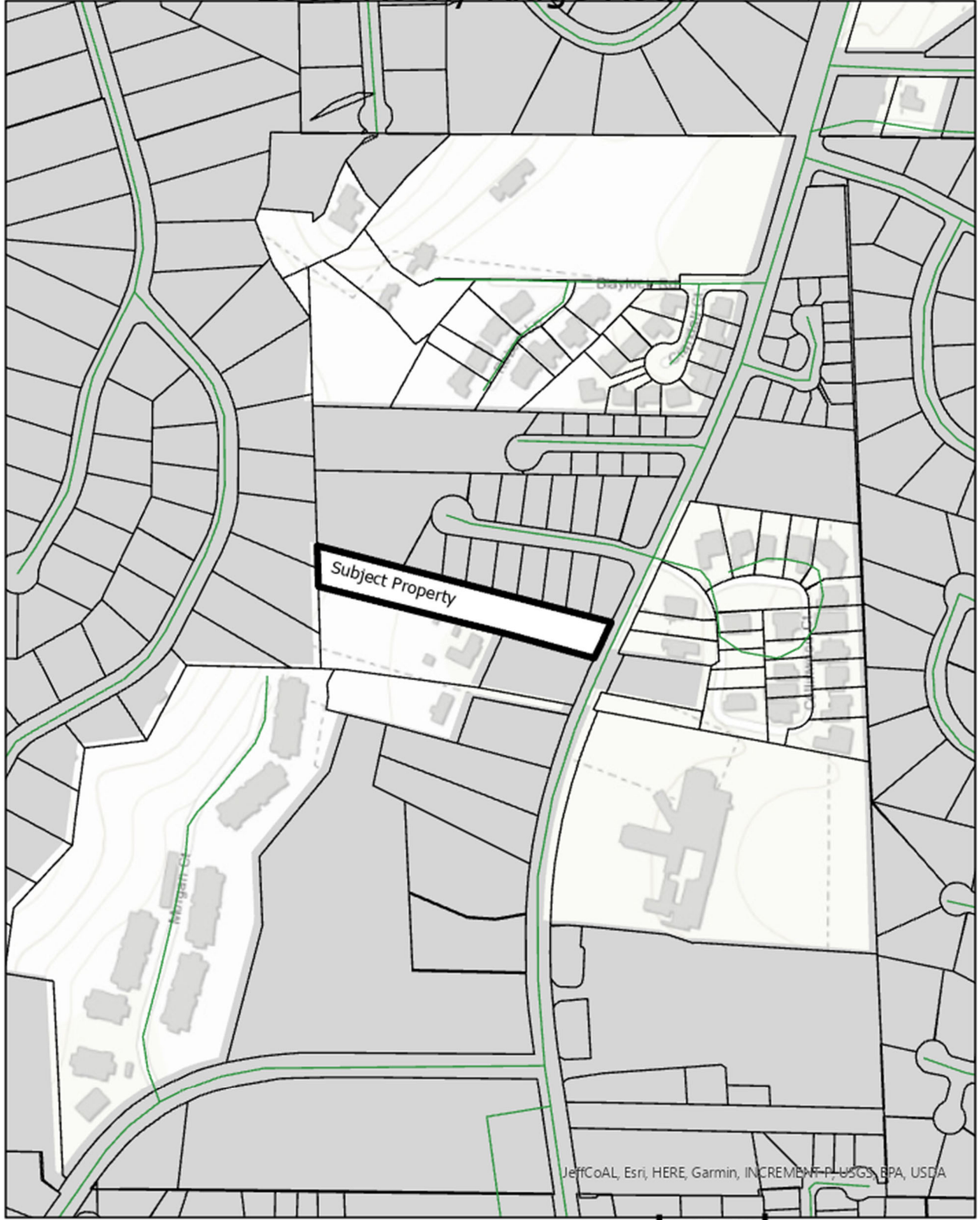
CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3291 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 17th day of October, 2025, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkel House and Vestavia Hills Recreational Center this the _____ day of _____, 2025.

Rebecca Leavings
City Clerk

2560 Rocky Ridge Road



JeffCoAL, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA

Legend

Vestavia_Hills_City_Limi ...



**CITY OF VESTAVIA HILLS
LIBRARY IN THE FOREST
INTER-DEPARTMENT MEMO**

October 13, 2025

To: Jeff Downes, City Manager

From: Daniel Tackett, Asst. Library Director

Cc: Rebecca Leavings, City Clerk
Taneisha Tucker, Library Director

RE: Resolution 5598 - A Resolution to declare certain personal property as surplus and authorize the City Manager to sell/dispose of said property

Background:

This memo requests that the Vestavia Hills City Council adopt a resolution declaring the following Library technology and furniture as surplus at the October 13, 2025 City Council meeting.

- 2 – Dell Optiplex 380 Computer – 2010
- 1 – Dell Optiplex 3020 Computers – 2015
- 1 – Dell Optiplex 3040 Computer – 2016
- 4 – Dell Optiplex 5070 Computer – 2020
- 1 – Dell Optiplex 755 Computer – 2008
- 3 – Dell Optiplex 7020 Computers – 2014
- 1 – Dell Optiplex 7060 Computers – 2019
- 1 – Dell Latitude E5420 Laptop Computer – 2012
- 1 – Dell Precision M4700 Laptop Computer – 2013

- 2 – Dell Latitude 3540 Laptop Computer – 2015
- 1 – Dell Inspiron 15 3573 Laptop Computer – 2015
- 1 – Dell Inspiron 15 5000 Laptop Computer – 2021
- 1 – Apple IMac 27inch Computers – 2014
- 1 – Apple Mac Mini Computer – 2010
- 2 – Apple Macbook Pro – 2010
- 1 – Dell PowerEdge R520 Server – 2013
- 1 – LG Flatron Monitor – 2011
- 13 – Dell Computer Monitor – 2014
- 4 – Dell Computer Monitor – 2015
- 2 – Dell Computer Monitor – 2019
- 1 – Samsung 55 inch TV – 2010
- 1 – Microsoft Xbox 360 – 2013
- 1 – Epson Home Cinema 3200 Projector – 2010
- 2 – Eurolive 300 watt Powered Speaker – 2015
- 1 – Art Studio Linear Amplifier – 2010
- 18 – Small Computer Chairs – 2010
- 7 – Projek Computer Task Chairs – 2022

Recommendation:

N/A

Fiscal Impact:

N/A

Attachments:

1. Resolution 5598

RESOLUTION NUMBER 5598

A RESOLUTION DETERMINING THAT CERTAIN PERSONAL PROPERTY IS NOT NEEDED FOR PUBLIC OR MUNICIPAL PURPOSES AND DIRECTING THE SALE/DISPOSAL OF SAID SURPLUS PROPERTY

WITNESSETH THESE RECITALS

WHEREAS, the City of Vestavia Hills, Alabama, is the owner of personal property detailed in the attached “Exhibit A”; and

WHEREAS, the City has determined that it would be in the best public interest to sell or dispose of said property.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The City Manager is hereby authorized to sell or dispose of the above-referenced surplus personal property; and
2. This Resolution Number 5598 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 13th day of October, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

EXHIBIT A

Misc. Library:

- 2 – Dell Optiplex 380 Computer – 2010
- 1 – Dell Optiplex 3020 Computers – 2015
- 1 – Dell Optiplex 3040 Computer – 2016
- 4 – Dell Optiplex 5070 Computer – 2020
- 1 – Dell Optiplex 755 Computer – 2008
- 3 – Dell Optiplex 7020 Computers – 2014
- 1 – Dell Optiplex 7060 Computers – 2019
- 1 – Dell Latitude E5420 Laptop Computer – 2012
- 1 – Dell Precision M4700 Laptop Computer – 2013
- 2 – Dell Latitude 3540 Laptop Computer – 2015
- 1 – Dell Inspiron 15 3573 Laptop Computer – 2015
- 1 – Dell Inspiron 15 5000 Laptop Computer – 2021
- 1 – Apple Imac 27inch Computers – 2014
- 1 – Apple Mac Mini Computer – 2010
- 2 – Apple Macbook Pro – 2010
- 1 – Dell PowerEdge R520 Server – 2013
- 1 – LG Flatron Monitor – 2011
- 13 – Dell Computer Monitor – 2014
- 4 – Dell Computer Monitor – 2015
- 2 – Dell Computer Monitor – 2019
- 1 – Samsung 55 inch TV – 2010
- 1 – Microsoft Xbox 360 – 2013
- 1 – Epson Home Cinema 3200 Projector – 2010
- 2 – Eurolive 300 watt Powered Speaker – 2015
- 1 – Art Studio Linear Amplifier – 2010
- 18 – Small Computer Chairs – 2010
- 7 – Projek Computer Task Chairs – 2022



**CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO**

October 13, 2025

To: Mayor and City Council

From: Jeff Downes, City Manager

Cc:

RE: Ordinance Number 3298 - An Ordinance Accepting a Proposal for Architectural Services to Design a Pool Heater and Renovations/Additions to the Alberto Zaragoza Fire Station #4 and Authorizing the Mayor and City Manager to execute any and all agreements for these design services

Background:

Doster Construction and the City have reviewed proposals from Williams Blackstock Architects (WBA) to provide design services for the addition of a pool heater and renovations to the Alberto Zaragoza Fire Station #4. The scope and fee proposal are acceptable, and WBA has agreed to the contract forms asserted in our RFP and legal review process.

Recommendation:

It is recommended to accept the proposals and enter into a contract with WBA for professional services.

Fiscal Impact:

The total fee proposal for the fire station renovation is estimated to be \$395,650. The fee proposal for the pool heater project is estimated to be \$101,645. These amounts are included in the FY26 Capital Projects Fund (Fund 20) Budget and were anticipated during project planning.

Attachments:

1. 2025.10.02_VH Fire Station 4
2. 2025.10.02_WaldParkPoolUpgrades
3. B132-2019-VHAC Pool Contract
4. Exhibit A-Description of Basic Services Pool
5. B132-2019- Fire Station
6. Exhibit A-Description of Basic Services FS
7. 25802 Vestavia Hills CM - AIA - A232
8. First Addendum to Architect Contract and General Conditions - Final
9. Ordinance 3298

October 2, 2025

Mr. Jeff Downes, City Manager
City of Vestavia Hills
1032 Montgomery Highway, Vestavia Hills, AL 35216
205.978.01695

Re: Vestavia Hills Fire Station No.4 Renovation and Expansion
Proposal for Architectural and Engineering Services

Jeff,

We are excited to continue our working relationship with the City of Vestavia Hills and appreciate the opportunity to submit a fee proposal for the design of the renovation and expansion of Fire Station Number 4. We understand that the Fire Department is expanding and will need the facilities to house a growing department. Part of the growth will be expanding the existing Fire Station No.4 in Liberty Park to house additional fire fighters and provide the appropriate support space and equipment in this facility.

PROJECT SCOPE

The project will aim to enlarge the existing Fire Station No.4 - including an addition to the existing building that will accommodate 11 sleeping units, an expanded Day Room and Kitchen, improved officer suites, additional full bathrooms, increase gear locker capacity from 19 to 33, and include a dedicated DECON room. As part of the project, a portion of the existing fire station is expected to be renovated. Upgrades to the gym and a transition from septic to sanitary sewer are also planned. As a result of the additional square footage, some site work and site improvements are expected to accommodate the larger building.

In addition to the facility expansion, phasing and logistics will be critical to ensure the fire station maintains operational continuity throughout construction. Other project goals that will be studied as part of the project include an additional 200 sq. ft. in space for the City's Disaster Recovery Unit - to support and provide redundant IT infrastructure during emergencies. The Fire Department would also like to explore an additional apparatus bay to the rear of the building if budget permits.

BUDGET

We understand that the City has budgeted \$4.2 million for construction cost of the project. We will work with you to track the project budget through each phase of design and during construction to deliver the project on time and within your allotted funds.

SCHEDULE

We understand that the City would like to complete the project as quickly as possible. Based on the overall project schedule developed by the Program Manager – Doster Construction – the design phase is scheduled to complete and issue Construction Documents by March 6, 2026. Construction will occur from April 2026 to April 2027.

TEAM

We have assembled an excellent team of design professionals for this project.
The team members include:

Civil Engineer	Caprine Engineering
Structural Engineer	Tucker Jones
Mechanical Engineer	Dewberry
Plumbing Engineer	Dewberry
Electrical Engineer	GW Engineering
Landscape Architect	MacKnally Land Design

SCOPE OF SERVICES

Our services include architecture, interior design, civil, structural, mechanical, electrical, plumbing and fire-protection engineering. The following is an outline of the scope of our proposed services and a brief description of each:

1. **Basic Design Services** - We will provide Basic Design Services for the design, bidding and construction administration of the fire station expansion and renovation. This includes Schematic Design (SD), Design Development (DD), Construction Documents (CD), Bid Negotiation (BN), and Construction Administration (CA) phases of work which are provided by the design team architect, civil, structural, mechanical (fire protection, plumbing and HVAC), and electrical engineering consultants. As part of our basic services, we have also included interior design services to design and select interior elements, finishes and materials not typically included in architectural basic services.
2. **Additional Service – Landscape Architecture** – MacKnalley Land Design, our landscape architecture consultant, will provide the following extra services which are being provided in addition to the basic services. These extra services are required to appropriately design and document planting on site, irrigation, hardscape design, and adhere to Liberty Park landscape ordinance requirements.
 - A) Landscape Planting Design and Documentation
 - B) Landscape Hardscape Design and Documentation
 - C) Landscape Irrigation Design and Documentation
3. **Additional Service – Fixtures, Furnishing, & Equipment (FF &E) Design** – We will provide FF&E Design as an extra service by assisting in the design, selection and procurement of furniture, fixtures, and equipment through a cooperative contract source. Our FF&E services will be provided in phases mirroring the architectural design phases; however, the FF&E package will be bid separately from the building package. In addition to bidding the work, we will oversee the installation and prepare punch lists once the work is complete so that deficiencies may be addressed by the contract source.
4. **Additional Service - Signage Design** – As an extra service, we will design custom signage for the project that complements the architecture of the building, the branding of the City of Vestavia Hills and Vestavia Hills Fire Department, and blends-in with the surrounding context. The scope of the signage work will include the design of all the project signage including the monument sign, building signage, room signs, and self-adhering vinyl graphics for the lobby if that is determined to be desirable. The signage will be specified and bid as part of the building construction package.

5. **Additional Service - Computer Renderings** – As an extra service, we will prepare up to three computer generated images for \$2,500 each using three-dimensional modeling software and other computer aided graphics for presentation purposes with the purpose of showing how the building and spaces will look when the project is finished yet before construction has been completed. This is especially helpful for review board and/or public presentations.
6. **Additional Service – Add Alternates** – We understand that the City and Fire Department would like to explore options to include an apparatus bay on the backside of the existing fire station, and to include Emergency Responder IT Infrastructure / Storm Shelter to serve as redundant information technology infrastructure for the City. This service would include additional design, construction documents, and bid documents to bid multiple project scope options. This service would allow the City to evaluate which project scope option to move forward with based on actual bid costs.

If further extra services that are not contemplated at this time are needed, we will outline fee proposals for the additional services not already included in this proposal and send them to you for authorization so that the contract may be modified by amendment. The following Extra Services are not included in this proposal and may or may not be required.

POSSIBLE EXTRA SERVICES – *Not Anticipated at this time.*

- Professional Cost Estimates
- Multiple Bid Packages
- Professional Renderings (beyond in-house capability)
- 3D Walkthroughs
- Audio/Visual System Design
- Acoustic Consultant
- LEED Certification
- Design and specification of standby power distribution (Emergency Power Generator)
- Design Changes after Prior Approval

FEE

We propose providing these services as follows.

- Basic Services for Renovation and Expansion \$ 336,000
*Calculated based on a percentage of construction cost with renovation factor (per Alabama DCM Fee Schedule).
 Building Group III: \$4,200,000 at 8% Fee (6.4% plus 25% renovation factor).*

We propose providing extra services for landscape architecture as a lump sum as follows.

- Landscape Architecture \$ 10,750
- FF&E Design \$ 12,500
- Signage Design \$ 4,900
- Computer Renderings (3) \$ 2,500 / ea.
- Add Alternates (IT Storm Shelter, Apparatus) \$ 29,000

We will invoice for the services monthly based on the progress completed.

ADDITIONAL SERVICES

The services outlined below are outside the limits of services already outlined above. If any of these services not currently anticipated need to be added later, we will work with you to develop a detailed scope of the additional services. If necessary and approved by you, these services would be provided at 1.2 times the direct cost of the work.

REIMBURSABLE SERVICES

Reimbursable expenses are in addition to compensation incurred by the Architect and our consultants in the interest of the Project and include drawing reproductions, postage, delivery, outsourced renderings, travel, overnight stays, and cost of advertisement for bids. Reimbursable expenses will be invoiced at 1.1 times the direct cost. Mileage for trips exceeding forty miles will be invoiced at the standard government reimbursable rate.

We are glad to be working with the City of Vestavia Hills on this project and know that we will work together to design an expanded Fire Station that the City and Fire Department will be proud to call home. We really value our relationship with the City and are thankful for another opportunity to work together.

If you agree with this fee proposal, please sign, and return this document at your earliest convenience. If you have any questions, please do not hesitate to call.

Sincerely,



Matt Foley, Partner

Enclosures: Exhibit A – Description of Basic Services
 Exhibit B - Hourly Rates

Approved by: _____

Date: _____

Exhibit A

DESCRIPTION OF BASIC SERVICES

SCHEMATIC DESIGN

- Review the space program to understand the programmatic requirements for the project.
- Prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement and delivery method to ascertain the requirements of the Project and notify the Owner of any inconsistencies or other information or consulting services that may be reasonably needed for the Project.
- Explore the preliminary vision and look and feel for the project exterior and interior.
- Develop site plan scenarios for optimization of site and parking based on site analysis and topographic, utility, environmental and site presence.
- Prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.
- Based on the Owner's approval of the preliminary design, develop the schematic design documents, including sections, elevations, and site plans, if appropriate, and present to Owner. Revise as required to develop the optimum scheme. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- Develop exterior elevation schemes and present to Owner.
- Develop preliminary renderings as may be required.
- Work with Program Manager to aid in the development of an estimate of the Cost of the Work.
- Meet with Owner at periodical intervals to discuss progress and gain input and approvals at each step of the way.
- Meet with Liberty Park planning and design review board to preview the project and site use during construction.

DESIGN DEVELOPMENT

- Based on approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, prepare hard line drawings that fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements.
- Develop exterior elevations to show materials and character of façade in detail.
- Develop interior elevation design drawings showing plans in more detail including cross sections and wall sections.
- Develop outline drawings of mechanical, electrical, plumbing and fire protection systems.
- Define structural system.
- Prepare an interior materials palette of interior finishes showing character and design for interior components of the project.
- Develop renderings of the exterior and interior for review and presentation to City and Liberty Park.
- Work with the Program Manager to aid in the update of the estimate of the Cost of the Work.
- Prepare outline specifications that identify major materials and systems and establish, in general, their quality levels.

CONSTRUCTION DOCUMENTS

- Based on Owner's approval of the Design Development Documents, and on Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, prepare Construction Documents including drawings and specifications suitable for permitting and pricing. Drawings will incorporate design requirements of governmental authorities having jurisdiction over the project.
- Provide interior design services consisting of the selection of finishes throughout the facility, including preparation of palette boards and necessary meetings and modifications as required.
- Work with the Program Manager to aid in the update of the estimate of the Cost of the Work.

BID / NEGOTIATION

- Assist the Program Manager and Owner in establishing a list of prospective contractors for either competitive bids or negotiated proposals.
- Issue Bidding Documents, answer contractor questions, issue addendum, or clarifications during bidding.
- Identify cost reduction options as part of negotiation or as alternates as project is being bid.
- If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.
- Organize and conduct a pre-bid conference and/or the opening of bids and subsequently documenting and distributing the bidding results.
- Assist Owner and Program Manager in preparing an Owner/Contractor Agreement.

CONSTRUCTION ADMINISTRATION

- Provide administration of the Contract between the Owner and Contractor.
- Observe construction on regular basis for compliance with contract documents.
- Meet at site every two weeks to review construction progress with one meeting a month relative to the Contractor's Application for Payment.
- Review and approve pay requests to confirm percentage complete is commensurate with work completed on site.
- Coordinate with Contractor throughout construction on field questions and clarifications.
- Review and approve contractor submittals including shop drawings and material submittals.
- Process any change orders to contract required or desired for changes in the work or schedule.
- Maintain records relative to changes in the Work.
- Review completed project by conducting final review and punch list of work to be completed for final payment and release of retainage.
- Oversee submittal of project close out documents and record copies.
- Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, conduct a meeting with the owner to review the facility operations and performance.

END – Exhibit A

Exhibit B

2025 HOURLY RATES

WILLIAMS BLACKSTOCK ARCHITECTS

Managing Principal	\$295.00
Principal	\$245.00
Senior Project Manager	\$205.00
Project Manager	\$190.00
Assistant Project Manager	\$175.00
Staff Arch / Interior Designer – Level 3	\$150.00
Staff Arch / Interior Designer – Level 2	\$135.00
Staff Arch / Interior Designer – Level 1	\$120.00
Senior Graphic Designer	\$155.00
Graphic Designer	\$145.00
Designer	\$130.00
Intern / Draftsmen	\$ 75.00
Administrative – Staff	\$ 60.00

END – Exhibit B

October 2, 2025

Mr. Jeff Downes, City Manager
City of Vestavia Hills
1032 Montgomery Highway, Vestavia Hills, AL 35216
205.978.01695

Re: Vestavia Hills Wald Park Aquatic Complex Upgrades
 Proposal for Architectural and Engineering Services

Jeff,

We are excited to continue our working relationship with the City of Vestavia Hills. We understand that the City is ready to proceed with adding heating equipment to the existing competition pool at Wald Park, and that the goal is to complete the work ahead of the upcoming pool season beginning Memorial Day 2026.

PROJECT SCOPE

The work would include the addition of pool heaters at a newly constructed equipment pad – which could include an enclosed structure. The addition of the pool heaters will also involve new pool water piping and electrical feeds that run to the new pool heater equipment location. Modifications within the existing pool equipment room, routing of the new infrastructure inside and out of the equipment room, and the work to route the piping and electrical to the new equipment location will be included in the scope of this work. As part of the project, we will study and present options on where the equipment can be located, potential solutions to enclose the equipment and provide additional storage space, and solutions on routing and repairing the existing hardscape and landscape.

We will work with the design team and Doster Construction – the Program Manager for the project – to present design options and the associated cost impacts to help inform the City in decision making.

BUDGET

Given the uniqueness of this project and that we are still exploring the best design solution for goals of the City, a budget is still in development. As part of our services, we will work with Doster Construction to outline the estimated cost of the project and will explore options to ensure the project is within the City's budget.

SCHEDULE

We understand that the City would like the pool heater equipment and associated work to be completed in time for the 2026 pool season, beginning Memorial Day 2026.

TEAM

We are proposing to work with the same design professionals that originally designed the Wald Park Aquatics Complex – to provide familiarity and continuity in this study.

The team members include:

Civil Engineer	TTL
Structural Engineer	Tucker Jones
Mechanical Engineer	Dewberry
Plumbing Engineer	Dewberry
Electrical Engineer	Dewberry
Pool Consultant	Counsilman-Hunsaker
Landscape Architect	MacKnally Land Design

SCOPE OF SERVICES

Based on our discussions we propose to organize and provide our work as outlined below –

Design Studies

We will review options on the equipment pad location, size, and whether it is an enclosed structure. These studies will also include potential added storage space, as well as options on how to route and replace the existing hardscape and landscape.

Basic Services

We will perform the typical Basic Services for this work in phases starting with Schematic Design, and continuing with Design Development, Construction Documents, Bidding, and through Construction Administration phases of the work. A detailed listing of these services is provided as an exhibit to this proposal. As part of our services, our design team will also coordinate and work with Foster Construction (the Program Manager) to coordinate the project schedule, cost estimates, deliver the construction documents, bid the project, and conduct construction administration.

FEE

Feasibility Study

We propose providing these services on a lump sum basis as follows.

• Site Survey	\$ 9,730
• Pool Heater – MEP and Pool Consultant	\$26,875
• Civil Engineering	\$15,000
• Architectural & Structural	\$45,000

We propose providing these services on an hourly basis as follows.

• Landscape Architecture	\$ 5,040 (<i>Not to Exceed Amount</i>)
--------------------------	--

We will invoice for the services monthly based on the progress completed.

Should the work require more time than we expect at the time of this proposal, and we approach the not to exceed amount, we will notify you and discuss the best path forward.

ADDITIONAL SERVICES

The services outlined below are outside the limits of services already outlined above. If any of these services not currently anticipated need to be added later, we will work with you to develop a detailed scope of the additional services. If necessary and approved by you, these services would be provided at 1.2 times the direct cost of the work.

ADDITIONAL SERVICES – NOT INCLUDED

These Additional Services are not anticipated at this time but could be considered to provide a more detailed and informed study. Once their specific scope of work is better understood we can provide an accurate fee proposal for these services.

<i>Service</i>	<i>Comment</i>
• Detailed Professional Cost Estimating	Not anticipated at this time.
• Geotechnical Survey / Testing	Not anticipated at this time.
• Rendered Drawings / Renderings	Not anticipated at this time.
• Traffic consultant / Parking Study	Not anticipated at this time.

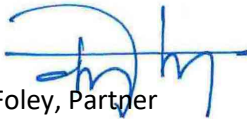
REIMBURSABLE SERVICES

Reimbursable expenses are in addition to compensation incurred by the Architect and our consultants in the interest of the Project and include drawing reproductions, postage, delivery, outsourced renderings, travel, overnight stays, and cost of advertisement for bids. Reimbursable expenses will be invoiced at 1.1 times the direct cost. Mileage for trips exceeding forty miles will be invoiced at the standard government reimbursable rate.

We are glad that you reached out to us first for this study and hope to be considered as part of your team with any other Vestavia Hills Park and Leisure projects in need of an architect. We really enjoyed working with you and hope to continue our relationship well in the future. If you agree with this fee proposal, please sign, and return this document at your earliest convenience.

If you have any questions, please do not hesitate to call.

Sincerely,



Matt Foley, Partner

Enclosures: Exhibit A – Description of Basic Services
 Exhibit B - Hourly Rates

Approved by: _____

Date: _____

Exhibit A

DESCRIPTION OF BASIC SERVICES

SCHEMATIC DESIGN

- Prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement and delivery method to ascertain the requirements of the Project and notify the Owner of any inconsistencies or other information or consulting services that may be reasonably needed for the Project.
- Explore the preliminary vision and look and feel for the project exterior and impact to existing interior space.
- Develop site plan scenarios for optimization of site and parking impact based on site analysis and topographic, utility, environmental and site presence.
- Prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.
- Based on the Owner's approval of the preliminary design, develop a set of schematic design documents, including sections, elevations, and site plans, if appropriate, and present to Owner. Revise as required to develop the optimum scheme. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- Develop exterior elevation schemes and present to Owner (if applicable).
- Develop preliminary renderings as may be required.
- Work with Owner's Program Manager to develop an estimate of the Cost of the Work cost based on historical square foot data or standards.
- Meet with Owner at periodical intervals to discuss progress and gain input and approvals at each step of the way.

DESIGN DEVELOPMENT

- Based on approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, prepare hard line drawings that fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements.
- Develop exterior elevations to show materials and character of façade in detail.
- Develop interior design drawings showing plans in more detail including cross sections and wall sections and how pool equipment and piping will be routed in existing conditions.
- Develop outline drawings of mechanical, electrical, plumbing and fire protection systems.
- Define structural system.
- Work with Program Manager to update the estimate of the Cost of the Work.
- Prepare outline specifications that identify major materials and systems and establish, in general, their quality levels.

CONSTRUCTION DOCUMENTS

- Based on Owner's approval of the Design Development Documents, and on Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, prepare Construction Documents including drawings and specifications suitable for permitting and pricing. Drawings will incorporate design requirements of governmental authorities having jurisdiction over the project.

- Work with Program Manager to update the estimate for the Cost of the Work.

BID / NEGOTIATION

- Assist the Owner in establishing a list of prospective contractors for either competitive bids or negotiated proposals.
- Issue Bidding Documents, answer contractor questions, issue addendum, or clarifications during bidding.
- Identify cost reduction options as part of negotiation or as alternates as project is being bid.
- If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.
- Organize and conduct a pre-bid conference and/or the opening of bids and subsequently documenting and distributing the bidding results.
- Assist Owner and Program Manager in preparing an Owner/Contractor Agreement.

CONSTRUCTION ADMINISTRATION

- Provide administration of the Contract between the Owner and Contractor.
- Observe construction on regular basis for compliance with contract documents.
- Meet at site every two weeks to review construction progress with one meeting a month relative to the Contractor's Application for Payment.
- Review and approve pay requests to confirm percentage complete is commensurate with work completed on site.
- Coordinate with Contractor throughout construction on field questions and clarifications.
- Review and approve contractor submittals including shop drawings and material submittals.
- Process any change orders to contract required or desired for changes in the work or schedule.
- Maintain records relative to changes in the Work.
- Review completed project by conducting final review and punch list of work to be completed for final payment and release of retainage.
- Oversee submittal of project close out documents and record copies.
- Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, conduct a meeting with the owner to review the facility operations and performance.

END – Exhibit A

Exhibit B

2025 HOURLY RATES

WILLIAMS BLACKSTOCK ARCHITECTS

Managing Principal	\$295.00
Principal	\$245.00
Senior Project Manager	\$205.00
Project Manager	\$190.00
Assistant Project Manager	\$175.00
Staff Arch / Interior Designer – Level 3	\$150.00
Staff Arch / Interior Designer – Level 2	\$135.00
Staff Arch / Interior Designer – Level 1	\$120.00
Senior Graphic Designer	\$155.00
Graphic Designer	\$145.00
Designer	\$130.00
Intern / Draftsmen	\$ 75.00
Administrative – Staff	\$ 60.00

END – Exhibit B

AIA[®] Document B132[™] – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition

AGREEMENT made as of the 7th day of October in the year 2025
(In words, indicate day, month, and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

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

Williams Blackstock Architects
2204 1st Avenue South, Suite 200
Birmingham, AL 35233

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

Vestavia Hills Aquatic Complex – Pool Heater Upgrade
720 Walldridge Road
Vestavia Hills, AL 35216

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

Doster Construction Company, Inc
2100 International Park Drive
Birmingham, AL 35243

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132[™]–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232[™]–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132[™]–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232[™]–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable," or "unknown at time of execution".)

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Installation of pool heater(s) for the existing Vestavia Hills Aquatic Complex at 720 Waldrige Road, Vestavia Hills, AL 35216.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

TBD

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

\$350,000.00

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Schematic Design Completion – October 16, 2025

Design Development Completion – November 4, 2025

Construction Drawings Completion – November 26, 2025

.2 Construction commencement date:

January 8, 2026

.3 Substantial Completion date or dates:

May 7, 2025

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid or negotiated contract.)

Competitive Bid

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
(Identify any requirements for fast-track scheduling or phased construction and, if applicable, list number and type of bid/procurement packages.)

TBD

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E235-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E235-2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E235-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Jeff Downes
City Manager
City of Vestavia Hills
1032 Montgomery Hwy
Vestavia Hills, AL 35216
205-978-0195
jdownes@vhal.org

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

TBD

§ 1.1.10 The Owner shall retain the following consultants and Contractors:
(List name, legal status, address, and other contact information.)

.1 Construction Manager:

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1.)

Doster Construction Company, Inc.
2100 International Park Drive
Birmingham, AL 35243

.2 Land Surveyor:

Retained under Architect.

.3 Geotechnical Engineer:

Not anticipated at this time.

.4 Civil Engineer:

Retained under Architect.

.5 Other consultants and Contractors:

(List any other consultants and Contractors retained by the Owner.)

None anticipated at this time.

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

Matt Foley, AIA, LEED, AP
Principal
Williams Blackstock Architects
2204 1st Avenue South, Suite 200
Birmingham, AL 35233
205-252-9811
matt@wba-architects.com

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Tucker-Jones Engineer Associated, INC
3300 Cahaba Road, Suite 210
Birmingham, AL 35223
205-879-5660

.2 Mechanical Engineer:

Dewberry
2 Riverchase Office Plaza, Suite 205
Birmingham, AL 35244-2810
205-988-2069

.3 Electrical Engineer:

Dewberry
2 Riverchase Office Plaza, Suite 205
Birmingham, AL 35244-2810
205-988-2069

.4 Plumbing Engineer:

Dewberry
2 Riverchase Office Plaza, Suite 205
Birmingham, AL 35244-2810
205-988-2069

.5 Civil Engineer:

TTL
10 Inverness Center Parkway, Suite 350
Hoover, AL 35242
205-539-0384

.6 Pool Consultant:

Counsilman-Hunsaker

.7 Landscape Architect:

Macknally Land Design
4000 3rd Avenue South, Suite 100
Birmingham, AL 35222
205-328-4160

§ 1.1.12.2 Consultants retained under Supplemental Services:

None anticipated at this time.

§ 1.1.13 Other Initial Information on which the Agreement is based:

Williams Blackstock Architects Proposal Dated October 6, 2025

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.4 The term "Contractors" refers to persons or entities who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager. The term "Contractors" is used to refer to such persons or entities, whether singular or plural. The term does not include the Owner's own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000) for each occurrence and Two Million (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000) 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.

§ 2.6.3 The Architect 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 liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, 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.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than One Million (\$ 1,000,000) each accident, One Million (\$ 1,000,000) each employee, with policy 1. Worker's Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating that the Contractor qualifies to pay its own workers' compensation claims.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million (\$ 1,000,000) per claim and Two Million (\$ 2,000,000) in the aggregate.

§ 2.6.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency, in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. This schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's or Construction Manager's directive or substitution,

or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner and Construction Manager regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Construction Manager's review and Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate such revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreements between the Owner and Contractors; and (3) the Conditions of the Contracts for Construction (General, Supplementary and other Conditions); and (4) a project manual that includes the Conditions of the Contracts for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.4.5 Upon receipt of the Construction Manager's information and an estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing Contracts for Construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

- § 3.5.2.2** The Architect shall assist the Owner and Construction Manager in bidding the Project by
- .1 facilitating the distribution of Bidding Documents to prospective bidders;
 - .2 organizing and conducting a pre-bid conference for prospective bidders;
 - .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and
 - .4 organizing and conducting the opening of bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, and proposed Contract Documents.

- § 3.5.3.2** The Architect shall assist the Owner and Construction Manager in obtaining proposals by:
- .1 facilitating the distribution of Proposal Documents for distribution to prospective Contractors, and requesting their return upon completion of the negotiation process;
 - .2 organizing and participating in selection interviews with prospective Contractors;
 - .3 preparing responses to questions from prospective Contractors and providing clarifications and interpretations of the Proposal Documents to the prospective Contractors in the form of addenda; and
 - .4 participating in negotiations with prospective Contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions, consult with the Construction Manager, and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232–2019, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractors' failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for acts or omissions of the Construction Manager, or acts or omissions of the Contractors or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and

quality of the portion of the Work completed, and promptly report to the Owner and the Construction Manager (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractors, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by the Owner and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractors designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232–2019, the Architect, with the assistance of the Construction Manager, shall render initial decisions on Claims between the Owner and Contractors as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 Not more frequently than monthly, the Architect shall review and certify an application for payment. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- .2 Where there is more than one Contractor responsible for performing different portions of the Project, the Architect shall review the Project Application and Project Certificate for Payment, with the Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed, and certified. The Architect shall certify the total amount due all Contractors collectively and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.3 The issuance of a Certificate for Payment or a Project Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner

to substantiate each Contractor's right to payment, or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.4 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule 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.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractors' submittals such as Shop Drawings, Product Data and Samples, that the Construction Manager has reviewed, recommended for approval, and transmitted to the Architect. The Architect's review of the submittals shall only be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractors' responsibilities. The Architect's review shall not constitute approval of safety precautions or 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.

§ 3.6.4.3 If the Contract Documents specifically require the Contractors to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractors' design professionals, provided the submittals bear such professionals' seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

§ 3.6.5.3 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall:

- .1 conduct inspections to determine the date of Substantial Completion and the date of final completion;

- .2 issue a Certificate of Substantial Completion prepared by the Construction Manager;
- .3 review written warranties and related documents required by the Contract Documents and received from the Contractors, through the Construction Manager; and
- .4 after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Construction Manager to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the lists submitted by the Construction Manager and Contractors of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid each of the Contractors, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractors, through the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractors under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and Construction Manager to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner or Not Provided)
§ 4.1.1.1 Assistance with selection of Construction Manager	
§ 4.1.1.2 Programming	
§ 4.1.1.3 Multiple preliminary designs	
§ 4.1.1.4 Measured drawings	
§ 4.1.1.5 Existing facilities surveys	
§ 4.1.1.6 Site evaluation and planning	
§ 4.1.1.7 Building Information Model management responsibilities	
§ 4.1.1.8 Development of Building Information Models for post construction use	
§ 4.1.1.9 Civil engineering	
§ 4.1.1.10 Landscape design	
§ 4.1.1.11 Architectural interior design	
§ 4.1.1.12 Value analysis	

§ 4.1.1.13	Cost estimating	
§ 4.1.1.14	On-site project representation	
§ 4.1.1.15	Conformed documents for construction	
§ 4.1.1.16	As-designed record drawings	
§ 4.1.1.17	As-constructed record drawings	
§ 4.1.1.18	Post-occupancy evaluation	
§ 4.1.1.19	Facility support services	
§ 4.1.1.20	Tenant-related services	
§ 4.1.1.21	Architect's coordination of the Owner's consultants	
§ 4.1.1.22	Telecommunications/data design	
§ 4.1.1.23	Security evaluation and planning	
§ 4.1.1.24	Commissioning	
§ 4.1.1.25	Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.26	Historic preservation	
§ 4.1.1.27	Furniture, furnishings, and equipment design	
§ 4.1.1.28	Other services provided by specialty Consultants	
§ 4.1.1.29	Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

TBD if needed

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

TBD if needed

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or

- delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;
 - .3 Services necessitated by enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
 - .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
 - .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;
 - .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
 - .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
 - .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
 - .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
 - .10 Evaluation of the qualifications of entities providing bids or proposals;
 - .11 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
 - .12 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Contractor's submittal out of sequence from the Project submittal schedule approved by the Architect;
- .2 Responding to the Contractors' requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractors from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractors' proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractors and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractors
- .2 Ten (10) visits to the site by the Architect during construction
- .3 Five (5) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Five (5) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work, or (2) the anticipated date of Substantial Completion identified in the Initial Information, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Eight (8) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Owner shall provide the Architect with a copy of the scope of services in the agreement executed between the Owner and the Construction Manager, and any subsequent modifications to the Construction Manager's scope of services in the agreement.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractors to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the

Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 Before executing the Contracts for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contracts for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager and Contractors to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 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 shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractors, Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and Separate Contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied

under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232–2019, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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 proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding

dispute resolution shall be the following:
(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Section 8.3 of this Agreement
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other: (Specify)

If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement 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 this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 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, dispute or other matter in question 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, dispute or other matter in question.

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

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

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 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 issues of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 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.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for

suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or if the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

TBD

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

TBD

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Architect and Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the

written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement, and including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect’s materials shall not include the Owner’s confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner’s promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days’ notice to the other party, when required by law, arbitrator’s order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
 (Insert amount)

 \$96,605.00

- .2 Percentage Basis
 (Insert percentage value)

N/A () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

Landscape Architecture not-to-exceed \$5,040.00, to be billed hourly.
Mileage exceeding forty (40) miles will be reimbursed at the standard federal government rate
Drawing reproductions
Postage
Delivery
Outsourced Renderings
Travel
Overnight Stays
Cost of Advertisement for Bids

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

TBD

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Additional Services are not anticipated at this time.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Twenty percent (20 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty	percent (20	%)
Design Development Phase	Twenty	percent (20	%)
Construction Documents Phase	Thirty	percent (30	%)
Procurement Phase	Five	percent (5	%)
Construction Phase	Twenty-five	percent (25	%)
Total Basic Compensation		one hundred percent (100.00 %)	

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate (\$0.00)
Managing Principal	\$295.00
Principal	\$245.00
Senior Project Manager	\$205.00
Project Manager	\$190.00
Assistant Project Manager	\$175.00
Staff Arch / Interior Designer – Level 3	\$150.00
Staff Arch / Interior Designer – Level 2	\$135.00
Staff Arch / Interior Designer – Level 1	\$120.00
Senior Graphic Designer	\$155.00
Graphic Designer	\$145.00
Designer	\$130.00
Intern / Draftsmen	\$75.00
Administrative - Staff	\$60.00

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

§ 11.9 Architect's Insurance

If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

N/A

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

3 % per annum

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to Contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B132™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition
- .2 Building Information Modeling Exhibit, if completed:

N/A

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

☒ [X] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this Agreement.)

☒ [X] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits

and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A – Architects Basic Services Scope

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

First Addendum to Standard Form Agreement between Owner and Architect, Construction Manager
as Adviser Edition and General Conditions of the Contract

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

OWNER (Signature)

BY: Ashley C. Curry

(Printed name and title)

ARCHITECT (Signature)

BY: Matt Foley, Principal

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

OWNER (Signature)

BY: Jeffrey D. Downes

(Printed name and title)

Additions and Deletions Report for AIA® Document B132™ – 2019

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 17:12:30 CDT on 10/07/2025.

Changes to original AIA text

PAGE 5

~~.2 Mechanical Engineer:~~

~~.3 Electrical Engineer:~~

~~§ 1.1.12.2 Consultants retained under Supplemental Services:~~

~~§ 1.1.13 Other Initial Information on which the Agreement is based:~~

.2 Mechanical Engineer:

.3 Electrical Engineer:

.4 Plumbing Engineer:

.5 Civil Engineer:

.6 Pool Consultant:

PAGE 6

.7 Landscape Architect:

§ 1.1.12.2 Consultants retained under Supplemental Services:

§ 1.1.13 Other Initial Information on which the Agreement is based:

PAGE 7

§ 2.6.5 Employers' Liability with policy limits not less than One Million (\$ \$1,000,000) each accident, One Million (\$ 1,000,000) each employee, and (\$ -) policy limit with policy 1. Worker's Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating that the Contractor qualifies to pay its own workers' compensation claims.

PAGE 24

Employee or Category
Managing Principal

Rate (\$0.00)
\$295.00

<u>Principal</u>	<u>\$245.00</u>
<u>Senior Project Manager</u>	<u>\$205.00</u>
<u>Project Manager</u>	<u>\$190.00</u>
<u>Assistant Project Manager</u>	<u>\$175.00</u>
<u>Staff Arch / Interior Designer – Level 3</u>	<u>\$150.00</u>
<u>Staff Arch / Interior Designer – Level 2</u>	<u>\$135.00</u>
<u>Staff Arch / Interior Designer – Level 1</u>	<u>\$120.00</u>
<u>Senior Graphic Designer</u>	<u>\$155.00</u>
<u>Graphic Designer</u>	<u>\$145.00</u>
<u>Designer</u>	<u>\$130.00</u>
<u>Intern / Draftsmen</u>	<u>\$75.00</u>
<u>Administrative - Staff</u>	<u>\$60.00</u>

PAGE 25

§ 11.10.1.1 An initial payment of Zero (\$-\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

Variable Information

PAGE 1

AGREEMENT made as of the 7th day of October in the year 2025

City of Vestavia Hills

1032 Montgomery Highway

Vestavia Hills, AL 35216

Williams Blackstock Architects

2204 1st Avenue South, Suite 200

Birmingham, AL 35233

Vestavia Hills Aquatic Complex – Pool Heater Upgrade

720 Waldrige Road

Vestavia Hills, AL 35216

Doster Construction Company, Inc

2100 International Park Drive

Birmingham, AL 35243

PAGE 2

Installation of pool heater(s) for the existing Vestavia Hills Aquatic Complex at 720 Waldrige Road, Vestavia Hills, AL 35216.

TBD

\$350,000.00

PAGE 3

Schematic Design Completion – October 16, 2025

Design Development Completion – November 4, 2025

Construction Drawings Completion – November 26, 2025

January 8, 2026

May 7, 2025

TBD

Competitive Bid

TBD

N/A

Jeff Downes

City Manager

City of Vestavia Hills

1032 Montgomery Hwy

Vestavia Hills, AL 35216

205-978-0195

jdownes@vhal.org

PAGE 4

TBD

Doster Construction Company, Inc.

2100 International Park Drive

Birmingham, AL 35243

Retained under Architect.

Not anticipated at this time.

Retained under Architect.

None anticipated at this time.

Matt Foley, AIA, LEED, AP

Principal

Williams Blackstock Architects

2204 1st Avenue South, Suite 200

Birmingham, AL 35233

205-252-9811

matt@wba-architects.com

PAGE 5

Tucker-Jones Engineer Associated, INC

3300 Cahaba Road, Suite 210

Birmingham, AL 35223

205-879-5660

Dewberry

2 Riverchase Office Plaza, Suite 205

Birmingham, AL 35244-2810

205-988-2069

Dewberry

2 Riverchase Office Plaza, Suite 205

Birmingham, AL 35244-2810

205-988-2069

Dewberry

2 Riverchase Office Plaza, Suite 205

Birmingham, AL 35244-2810

205-988-2069

TTL

10 Inverness Center Parkway, Suite 350

Hoover, AL 35242

205-539-0384

PAGE 6

Counsleman-Hunsaker

Macknally Land Design

4000 3rd Avenue South, Suite 100

Birmingham, AL 35222

205-328-4160

None anticipated at this time.

Williams Blackstock Architects Proposal Dated October 6, 2025

PAGE 7

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000) for each occurrence and Two Million (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000) 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.

§ 2.6.5 Employers' Liability with policy limits not less than One Million (\$ \$1,000,000) each accident, One Million (\$ 1,000,000) each employee, ~~and (\$ -) policy limit with policy 1.~~ Worker's Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating that the Contractor qualifies to pay its own workers' compensation claims.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million (\$ 1,000,000) per claim and Two Million (\$ 2,000,000) in the aggregate.

PAGE 14

TBD if needed

TBD if needed

PAGE 15

- .1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractors

PAGE 16

- .2 Ten (10) visits to the site by the Architect during construction
- .3 Five (5) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Five (5) inspections for any portion of the Work to determine final completion

§ 4.2.5 If the services covered by this Agreement have not been completed within Eight (8) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

PAGE 20

[X] Arbitration pursuant to Section 8.3 of this Agreement

PAGE 21

TBD

TBD

PAGE 22

\$96,605.00

N/A () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

PAGE 23

Landscape Architecture not-to-exceed \$5,040.00, to be billed hourly.

Mileage exceeding forty (40) miles will be reimbursed at the standard federal government rate

Drawing reproductions

Postage

Delivery

Outsourced Renderings

Travel

Overnight Stays

Cost of Advertisement for Bids

TBD

Additional Services are not anticipated at this time.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Twenty percent (20 %), or as follows:

Schematic Design Phase	<u>Twenty</u>	percent (<u>20</u> %)
Design Development Phase	<u>Twenty</u>	percent (<u>20</u> %)
Construction Documents Phase	<u>Thirty</u>	percent (<u>30</u> %)
Procurement Phase	<u>Five</u>	percent (<u>5</u> %)
Construction Phase	<u>Twenty-five</u>	percent (<u>25</u> %)
Total Basic Compensation		one hundred percent (100.00 %)

PAGE 24

Employee or Category	Rate (\$0.00)
<u>Managing Principal</u>	<u>\$295.00</u>
<u>Principal</u>	<u>\$245.00</u>
<u>Senior Project Manager</u>	<u>\$205.00</u>
<u>Project Manager</u>	<u>\$190.00</u>
<u>Assistant Project Manager</u>	<u>\$175.00</u>
<u>Staff Arch / Interior Designer – Level 3</u>	<u>\$150.00</u>
<u>Staff Arch / Interior Designer – Level 2</u>	<u>\$135.00</u>
<u>Staff Arch / Interior Designer – Level 1</u>	<u>\$120.00</u>
<u>Senior Graphic Designer</u>	<u>\$155.00</u>
<u>Graphic Designer</u>	<u>\$145.00</u>
<u>Designer</u>	<u>\$130.00</u>
<u>Intern / Draftsmen</u>	<u>\$75.00</u>
<u>Administrative - Staff</u>	<u>\$60.00</u>

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

PAGE 25

N/A

§ 11.10.1.1 An initial payment of Zero (\$ \$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

3 % per annum

N/A

N/A

[N/A] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager
as

PAGE 26

[1] Other Exhibits incorporated into this Agreement:

Exhibit A – Architects Basic Services Scope

First Addendum to Standard Form Agreement between Owner and Architect, Construction Manager
as Adviser Edition and General Conditions of the Contract

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 17:12:30 CDT on 10/07/2025 under Order No. 20250116781 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B132™ - 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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User Notes:

(68e58f7fff76f077366e31e0)

Exhibit A

DESCRIPTION OF BASIC SERVICES

SCHEMATIC DESIGN

- Prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement and delivery method to ascertain the requirements of the Project and notify the Owner of any inconsistencies or other information or consulting services that may be reasonably needed for the Project.
- Explore the preliminary vision and look and feel for the project exterior and impact to existing interior space.
- Develop site plan scenarios for optimization of site and parking impact based on site analysis and topographic, utility, environmental and site presence.
- Prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.
- Based on the Owner's approval of the preliminary design, develop a set of schematic design documents, including sections, elevations, and site plans, if appropriate, and present to Owner. Revise as required to develop the optimum scheme. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- Develop exterior elevation schemes and present to Owner (if applicable).
- Develop preliminary renderings as may be required.
- Work with Owner's Program Manager to develop an estimate of the Cost of the Work cost based on historical square foot data or standards.
- Meet with Owner at periodical intervals to discuss progress and gain input and approvals at each step of the way.

DESIGN DEVELOPMENT

- Based on approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, prepare hard line drawings that fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements.
- Develop exterior elevations to show materials and character of façade in detail.
- Develop interior design drawings showing plans in more detail including cross sections and wall sections and how pool equipment and piping will be routed in existing conditions.
- Develop outline drawings of mechanical, electrical, plumbing and fire protection systems.
- Define structural system.
- Work with Program Manager to update the estimate of the Cost of the Work.
- Prepare outline specifications that identify major materials and systems and establish, in general, their quality levels.

CONSTRUCTION DOCUMENTS

- Based on Owner's approval of the Design Development Documents, and on Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, prepare Construction Documents including drawings and specifications suitable for permitting and pricing. Drawings will incorporate design requirements of governmental authorities having jurisdiction over the project.

- Work with Program Manager to update the estimate for the Cost of the Work.

BID / NEGOTIATION

- Assist the Owner in establishing a list of prospective contractors for either competitive bids or negotiated proposals.
- Issue Bidding Documents, answer contractor questions, issue addendum, or clarifications during bidding.
- Identify cost reduction options as part of negotiation or as alternates as project is being bid.
- If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.
- Organize and conduct a pre-bid conference and/or the opening of bids and subsequently documenting and distributing the bidding results.
- Assist Owner and Program Manager in preparing an Owner/Contractor Agreement.

CONSTRUCTION ADMINISTRATION

- Provide administration of the Contract between the Owner and Contractor.
- Observe construction on regular basis for compliance with contract documents.
- Meet at site every two weeks to review construction progress with one meeting a month relative to the Contractor's Application for Payment.
- Review and approve pay requests to confirm percentage complete is commensurate with work completed on site.
- Coordinate with Contractor throughout construction on field questions and clarifications.
- Review and approve contractor submittals including shop drawings and material submittals.
- Process any change orders to contract required or desired for changes in the work or schedule.
- Maintain records relative to changes in the Work.
- Review completed project by conducting final review and punch list of work to be completed for final payment and release of retainage.
- Oversee submittal of project close out documents and record copies.
- Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, conduct a meeting with the owner to review the facility operations and performance.



AIA[®] Document B132[™] – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition

AGREEMENT made as of the 7th day of October in the year
2025

(In words, indicate day, month, and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

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

Williams Blackstock Architects
2204 1st Avenue South, Suite 200
Birmingham, AL 35233

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

Vestavia Hills Alberto C. Zaragoza Jr. Fire Station No. 4 Renovation
13041 Liberty Parkway
Vestavia Hills, AL 35242

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

Doster Construction Company, Inc.
2100 International Park Drive
Birmingham, AL 35243

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132[™]–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232[™]–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132[™]–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232[™]–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable," or "unknown at time of execution".)

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Renovation of Vestavia Hills Alberto C. Zaragoza Jr. Fire Station No. 4 Renovation – 13041 Liberty Parkway, Vestavia Hills, AL 35242

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

TBD

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

\$5,654,652.00

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Schematic Design Completion – November 12, 2025

Design Development Completion – January 8, 2026

Construction Drawings Completion – March 6, 2026

.2 Construction commencement date:

April 14, 2026

.3 Substantial Completion date or dates:

April 16, 2027

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid or negotiated contract.)

Competitive Bid

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
(Identify any requirements for fast-track scheduling or phased construction and, if applicable, list number and type of bid/procurement packages.)

TBD

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E235-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E235-2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E235-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Jeff Downes
City Manager
City of Vestavia Hills
1032 Montgomery Hwy
Vestavia Hills, AL 35216
205-978-0195
jdownes@vhal.org

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

TBD

§ 1.1.10 The Owner shall retain the following consultants and Contractors:
(List name, legal status, address, and other contact information.)

.1 Construction Manager:

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1.)

Doster Construction Company, Inc.
2100 International Park Drive
Birmingham, AL 35243

.2 Land Surveyor:

Not anticipated at this time.

.3 Geotechnical Engineer:

Not anticipated at this time.

.4 Civil Engineer:

Retained under Architect

.5 Other consultants and Contractors:

(List any other consultants and Contractors retained by the Owner.)

None anticipated at this time.

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

Matt Foley, AIA, LEED, AP
Principal
Williams Blackstock Architects
2204 1st Avenue South, Suite 200
Birmingham, AL 35233
205-252-9811
matt@wba-architects.

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Tucker-Jones Engineer Associated, INC
3300 Cahaba Road, Suite 210
Birmingham, AL 35223
205-879-5660

.2 Mechanical Engineer:

Dewberry
2 Riverchase Office Plaza, Suite 205
Birmingham, AL 35244-2810
205-988-2069

.3 Electrical Engineer:

GW Engineering

.4 Plumbing Engineer:

Dewberry
2 Riverchase Office Plaza, Suite 205
Birmingham, AL 35244-2810
205-988-2069

.5 Civil Engineer:

Caprine Engineering LLC
3 Office Park Circle #226
Birmingham, AL 35223
205-423-5082

.7 Landscape Architect:

MacKnally Land Design
4000 3rd Avenue South, Suite 100
Birmingham, AL 35222
205-328-4160

§ 1.1.12.2 Consultants retained under Supplemental Services:

None anticipated at this time.

§ 1.1.13 Other Initial Information on which the Agreement is based:

Williams Blackstock Architects Proposal Dated 10/2/2025

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or

contributors to, the building information model, and each of their agents and employees.

§ 1.4 The term “Contractors” refers to persons or entities who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager. The term “Contractors” is used to refer to such persons or entities, whether singular or plural. The term does not include the Owner’s own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

ARTICLE 2 ARCHITECT’S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner’s knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect’s professional judgment with respect to this Project.

§ 2.6 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000) for each occurrence and Two Million (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000) 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.

§ 2.6.3 The Architect 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 liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, 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.

§ 2.6.4 Workers’ Compensation at statutory limits.

§ 2.6.5 Employers’ Liability with policy limits not less than One Million (\$ 1,000,000) each accident, One Million (\$ 1,000,000) each employee, with policy 1. Worker’s Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating that the Contractor qualifies to pay its own workers’ compensation claims.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million (\$ 1,000,000) per claim and Two Million (\$ 2,000,000)

in the aggregate.

§ 2.6.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency, in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. This schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's or Construction Manager's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any

inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner and Construction Manager regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Construction Manager's review and Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate such revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design

Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreements between the Owner and Contractors; and (3) the Conditions of the Contracts for Construction (General, Supplementary and other Conditions); and (4) a project manual that includes the Conditions of the Contracts for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.4.5 Upon receipt of the Construction Manager's information and an estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing Contracts for Construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project by

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and
- .4 organizing and conducting the opening of bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner and Construction Manager in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective Contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective Contractors;
- .3 preparing responses to questions from prospective Contractors and providing clarifications and interpretations of the Proposal Documents to the prospective Contractors in the form of addenda; and
- .4 participating in negotiations with prospective Contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions, consult with the Construction Manager, and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232–2019, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractors' failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for acts or omissions of the Construction Manager, or acts or omissions of the Contractors or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and the Construction Manager (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractors, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by the Owner and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractors designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232–2019, the Architect, with the assistance of the Construction Manager, shall render initial decisions on Claims between the Owner and Contractors as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 Not more frequently than monthly, the Architect shall review and certify an application for payment. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- .1** Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- .2** Where there is more than one Contractor responsible for performing different portions of the Project, the Architect shall review the Project Application and Project Certificate for Payment, with the Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed, and certified. The Architect shall certify the total amount due all Contractors collectively and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.3 The issuance of a Certificate for Payment or a Project Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate each Contractor's right to payment, or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.4 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule 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.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractors' submittals such as Shop Drawings, Product Data and Samples, that the Construction Manager has reviewed, recommended for approval, and transmitted to the Architect. The Architect's review of the submittals shall only be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and

completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractors' responsibilities. The Architect's review shall not constitute approval of safety precautions or 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.

§ 3.6.4.3 If the Contract Documents specifically require the Contractors to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractors' design professionals, provided the submittals bear such professionals' seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

§ 3.6.5.3 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall:

- .1 conduct inspections to determine the date of Substantial Completion and the date of final completion;
- .2 issue a Certificate of Substantial Completion prepared by the Construction Manager;
- .3 review written warranties and related documents required by the Contract Documents and received from the Contractors, through the Construction Manager; and
- .4 after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Construction Manager to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the lists submitted by the Construction Manager and Contractors of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid each of the Contractors, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractors, through the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractors under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and Construction Manager to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner or Not Provided)
§ 4.1.1.1 Assistance with selection of Construction Manager	
§ 4.1.1.2 Programming	
§ 4.1.1.3 Multiple preliminary designs	
§ 4.1.1.4 Measured drawings	
§ 4.1.1.5 Existing facilities surveys	
§ 4.1.1.6 Site evaluation and planning	
§ 4.1.1.7 Building Information Model management responsibilities	
§ 4.1.1.8 Development of Building Information Models for post construction use	
§ 4.1.1.9 Civil engineering	
§ 4.1.1.10 Landscape design	
§ 4.1.1.11 Architectural interior design	
§ 4.1.1.12 Value analysis	
§ 4.1.1.13 Cost estimating	
§ 4.1.1.14 On-site project representation	
§ 4.1.1.15 Conformed documents for construction	
§ 4.1.1.16 As-designed record drawings	
§ 4.1.1.17 As-constructed record drawings	
§ 4.1.1.18 Post-occupancy evaluation	
§ 4.1.1.19 Facility support services	
§ 4.1.1.20 Tenant-related services	
§ 4.1.1.21 Architect's coordination of the Owner's consultants	
§ 4.1.1.22 Telecommunications/data design	
§ 4.1.1.23 Security evaluation and planning	
§ 4.1.1.24 Commissioning	
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	

§ 4.1.1.26	Historic preservation	
§ 4.1.1.27	Furniture, furnishings, and equipment design	
§ 4.1.1.28	Other services provided by specialty Consultants	
§ 4.1.1.29	Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

TBD if needed

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

TBD if needed

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;
- .3 Services necessitated by enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;

- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Evaluation of the qualifications of entities providing bids or proposals;
- .11 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .12 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Contractor's submittal out of sequence from the Project submittal schedule approved by the Architect;
- .2 Responding to the Contractors' requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractors from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractors' proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractors and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractors
- .2 Twenty-Four (24) visits to the site by the Architect during construction
- .3 Twelve (12) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Twelve (12) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work, or (2) the anticipated date of Substantial Completion identified in the Initial Information, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty (20) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Owner shall provide the Architect with a copy of the scope of services in the agreement executed between the Owner and the Construction Manager, and any subsequent modifications to the Construction Manager's scope of services in the agreement.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractors to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E235™-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 Before executing the Contracts for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contracts for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager and Contractors to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 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 shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractors, Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and Separate Contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232–2019, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner’s officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys’ fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect’s obligation to indemnify and hold the Owner and the Owner’s officers and employees harmless does not include a duty to defend. The Architect’s duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect’s services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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 proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

☒ [X] Arbitration pursuant to Section 8.3 of this Agreement

☐ [] Litigation in a court of competent jurisdiction

☐ [] Other: *(Specify)*

If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement 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 this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 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, dispute or other matter in question 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, dispute or other matter in question.

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

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

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 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 issues of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 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.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other

party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or if the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

TBD

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

TBD

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Architect and Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, and including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery,

presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect’s materials shall not include the Owner’s confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner’s promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days’ notice to the other party, when required by law, arbitrator’s order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1

Stipulated Sum
(Insert amount)

\$336,000.00
- .2

Percentage Basis
(Insert percentage value)

N/A () % of the Owner’s budget for the Cost of the Work, as calculated in accordance with Section 11.6.
- .3

Other
(Describe the method of compensation)

Extra services for landscape architecture as a lump sum as follows:

- Landscape Architecture

\$10,750.00
- FF&E Design

\$12,500.00
- Signage Design

\$ 4,900.00
- Computer Renderings (3)

\$ 2,500.00/each
- Add Alternates (IT Storm Shelter, Apparatus)

\$29,000.00

Mileage exceeding forty (40) miles will be reimbursed at the standard federal government rate

Drawing reproductions
 Postage
 Delivery
 Outsourced Renderings
 Travel
 Overnight Stays
 Cost of Advertisement for Bids

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

TBD

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Additional Services are not anticipated at this time.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Twenty percent (20 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty percent (20 %)
Design Development Phase	Twenty percent (20 %)
Construction Documents Phase	Thirty percent (30 %)
Procurement Phase	Five percent (5 %)
Construction Phase	Twenty-Five percent (25 %)
Total Basic Compensation	one hundred percent (100.00 %)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
Managing Principal	\$295.00
Principal	\$245.00
Senior Project Manager	\$205.00
Project Manager	\$190.00
Assistant Project Manager	\$175.00
Staff Arch / Interior Designer – Level 3	\$150.00
Staff Arch / Interior Designer – Level 2	\$135.00
Staff Arch / Interior Designer – Level 1	\$120.00
Senior Graphic Designer	\$155.00
Graphic Designer	\$145.00
Designer	\$130.00
Intern / Draftsmen	\$75.00
Administrative - Staff	\$60.00

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

§ 11.9 Architect's Insurance

If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

N/A

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

3 % per annum

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to Contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B132™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition
- .2 Building Information Modeling Exhibit, if completed:

N/A

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[X] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this Agreement.)

[X] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A – Architects Basic Services Scope

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

First Addendum to Standard Form Agreement between Owner and Architect, Construction Manager
as Adviser Edition and General Conditions of the Contract

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

OWNER *(Signature)*

BY: Ashley C. Curry

(Printed name and title)

ARCHITECT *(Signature)*

BY: Matt Foley, Principal

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

OWNER *(Signature)*

BY: Jeffrey D. Downes

(Printed name and title)

Additions and Deletions Report for AIA® Document B132™ – 2019

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 17:18:13 CDT on 10/07/2025.

Changes to original AIA text

PAGE 5

~~§ 1.1.12.2 Consultants retained under Supplemental Services:~~

.4 Plumbing Engineer:

.5 Civil Engineer:

.7 Landscape Architect:

§ 1.1.12.2 Consultants retained under Supplemental Services:

PAGE 7

§ 2.6.5 Employers' Liability with policy limits not less than One Million (\$ 1,000,000) each accident, One Million (\$ 1,000,000) each employee, and (\$ -) policy limit with policy 1. Worker's Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating that the Contractor qualifies to pay its own workers' compensation claims.

PAGE 22

- Landscape Architecture \$10,750.00
- FF&E Design \$12,500.00
- Signage Design \$ 4,900.00
- Computer Renderings (3) \$ 2,500.00/each
- Add Alternates (IT Storm Shelter, Apparatus) \$29,000.00

PAGE 23

Schematic Design Phase	- <u>Twenty</u> percent (<u>20</u> %)
Design Development Phase	<u>Twenty</u> percent (<u>20</u> %)

Construction Documents Phase	<u>Thirty</u> percent (<u>30</u> %)
Procurement Phase	<u>Five</u> percent (<u>5</u> %)
Construction Phase	<u>Twenty-Five</u> percent (<u>25</u> %)
Total Basic Compensation	one hundred percent (100.00 %)

PAGE 24

Employee or Category	Rate (\$0.00)
<u>Managing Principal</u>	<u>\$295.00</u>
<u>Principal</u>	<u>\$245.00</u>
<u>Senior Project Manager</u>	<u>\$205.00</u>
<u>Project Manager</u>	<u>\$190.00</u>
<u>Assistant Project Manager</u>	<u>\$175.00</u>
<u>Staff Arch / Interior Designer – Level 3</u>	<u>\$150.00</u>
<u>Staff Arch / Interior Designer – Level 2</u>	<u>\$135.00</u>
<u>Staff Arch / Interior Designer – Level 1</u>	<u>\$120.00</u>
<u>Senior Graphic Designer</u>	<u>\$155.00</u>
<u>Graphic Designer</u>	<u>\$145.00</u>
<u>Designer</u>	<u>\$130.00</u>
<u>Intern / Draftsmen</u>	<u>\$75.00</u>
<u>Administrative - Staff</u>	<u>\$60.00</u>

Variable Information

PAGE 1

AGREEMENT made as of the 7th day of October in the year 2025

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

Williams Blackstock Architects
2204 1st Avenue South, Suite 200

Birmingham, AL 35233

Vestavia Hills Alberto C. Zaragoza Jr. Fire Station No. 4 Renovation

13041 Liberty Parkway

Vestavia Hills, AL 35242

Doster Construction Company, Inc.

2100 International Park Drive

Birmingham, AL 35243

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User Notes:

Renovation of Vestavia Hills Alberto C. Zaragoza Jr. Fire Station No. 4 Renovation – 13041 Liberty Parkway,
Vestavia Hills, AL 35242

TBD

\$5,654,652.00

PAGE 3

Schematic Design Completion – November 12, 2025

Design Development Completion – January 8, 2026

Construction Drawings Completion – March 6, 2026

April 14, 2026

April 16, 2027

TBD

Competitive Bid

TBD

N/A

Jeff Downes

City Manager

City of Vestavia Hills

1032 Montgomery Hwy

Vestavia Hills, AL 35216

205-978-0195

jdownes@vhal.org

PAGE 4

TBD

Doster Construction Company, Inc.

2100 International Park Drive

Birmingham, AL 35243

Not anticipated at this time.

Not anticipated at this time.

Retained under Architect

None anticipated at this time.

Matt Foley, AIA, LEED, AP

Principal

Williams Blackstock Architects

2204 1st Avenue South, Suite 200

Birmingham, AL 35233

205-252-9811

matt@wba-architects.

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Tucker-Jones Engineer Associated, INC

3300 Cahaba Road, Suite 210

Birmingham, AL 35223

205-879-5660

Dewberry

2 Riverchase Office Plaza, Suite 205

Birmingham, AL 35244-2810

205-988-2069

GW Engineering

Dewberry

2 Riverchase Office Plaza, Suite 205

Birmingham, AL 35244-2810

205-988-2069

Caprine Engineering LLC

3 Office Park Circle #226

Birmingham, AL 35223

205-423-5082

MacKnally Land Design

4000 3rd Avenue South, Suite 100

Birmingham, AL 35222

205-328-4160

None anticipated at this time.

PAGE 6

Williams Blackstock Architects Proposal Dated 10/2/2025

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000) for each occurrence and Two Million (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000) 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.

PAGE 7

§ 2.6.5 Employers' Liability with policy limits not less than One Million (\$ 1,000,000) each accident, One Million (\$ 1,000,000) each employee, ~~and (\$ -) policy limit with policy 1.~~ Worker's Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating that the Contractor qualifies to pay its own workers' compensation claims.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million (\$ 1,000,000) per claim and Two Million (\$ 2,000,000) in the aggregate.

PAGE 14

TBD if needed

TBD if needed

PAGE 15

- .1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractors
- .2 Twenty-Four (24) visits to the site by the Architect during construction
- .3 Twelve (12) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Twelve (12) inspections for any portion of the Work to determine final completion

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty (20) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time shall be compensated as Additional Services.

PAGE 19

[X] Arbitration pursuant to Section 8.3 of this Agreement

PAGE 21

TBD

TBD

PAGE 22

\$336,000.00

N/A () % of the Owner’s budget for the Cost of the Work, as calculated in accordance with Section 11.6.

Extra services for landscape architecture as a lump sum as follows:

- Landscape Architecture \$10,750.00
- FF&E Design \$12,500.00
- Signage Design \$ 4,900.00
- Computer Renderings (3) \$ 2,500.00/each
- Add Alternates (IT Storm Shelter, Apparatus) \$29,000.00

Mileage exceeding forty (40) miles will be reimbursed at the standard federal government rate

Drawing reproductions

Postage

Delivery

Outsourced Renderings

Travel

Overnight Stays

Cost of Advertisement for Bids

PAGE 23

TBD

Additional Services are not anticipated at this time.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Twenty percent (20 %), or as follows:

Schematic Design Phase	- <u>Twenty</u> percent (<u>20</u> %)
Design Development Phase	<u>Twenty</u> percent (<u>20</u> %)
Construction Documents Phase	<u>Thirty</u> percent (<u>30</u> %)
Procurement Phase	<u>Five</u> percent (<u>5</u> %)
Construction Phase	<u>Twenty-Five</u> percent (<u>25</u> %)

Total Basic Compensation	one hundred percent (100.00 %)
--------------------------	---------------------------------

Employee or Category	Rate (\$0.00)
<u>Managing Principal</u>	<u>\$295.00</u>
<u>Principal</u>	<u>\$245.00</u>
<u>Senior Project Manager</u>	<u>\$205.00</u>
<u>Project Manager</u>	<u>\$190.00</u>
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<u>Staff Arch / Interior Designer – Level 3</u>	<u>\$150.00</u>
<u>Staff Arch / Interior Designer – Level 2</u>	<u>\$135.00</u>
<u>Staff Arch / Interior Designer – Level 1</u>	<u>\$120.00</u>
<u>Senior Graphic Designer</u>	<u>\$155.00</u>
<u>Graphic Designer</u>	<u>\$145.00</u>
<u>Designer</u>	<u>\$130.00</u>
<u>Intern / Draftsmen</u>	<u>\$75.00</u>
<u>Administrative - Staff</u>	<u>\$60.00</u>

PAGE 24

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

N/A

§ 11.10.1.1 An initial payment of Zero (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

PAGE 25

3 % per annum

N/A

N/A

as [N/A] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager

[1] Other Exhibits incorporated into this Agreement:

Exhibit A – Architects Basic Services Scope

First Addendum to Standard Form Agreement between Owner and Architect, Construction Manager as Adviser Edition and General Conditions of the Contract

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 17:18:13 CDT on 10/07/2025 under Order No. 20250116781 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B132™ - 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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User Notes:

(68e590f2805423b484866aca)

Exhibit A

DESCRIPTION OF BASIC SERVICES

SCHEMATIC DESIGN

- Review the space program to understand the programmatic requirements for the project.
- Prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement and delivery method to ascertain the requirements of the Project and notify the Owner of any inconsistencies or other information or consulting services that may be reasonably needed for the Project.
- Explore the preliminary vision and look and feel for the project exterior and interior.
- Develop site plan scenarios for optimization of site and parking based on site analysis and topographic, utility, environmental and site presence.
- Prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.
- Based on the Owner's approval of the preliminary design, develop the schematic design documents, including sections, elevations, and site plans, if appropriate, and present to Owner. Revise as required to develop the optimum scheme. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- Develop exterior elevation schemes and present to Owner.
- Develop preliminary renderings as may be required.
- Work with Program Manager to aid in the development of an estimate of the Cost of the Work.
- Meet with Owner at periodical intervals to discuss progress and gain input and approvals at each step of the way.
- Meet with Liberty Park planning and design review board to preview the project and site use during construction.

DESIGN DEVELOPMENT

- Based on approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, prepare hard line drawings that fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements.
- Develop exterior elevations to show materials and character of façade in detail.
- Develop interior elevation design drawings showing plans in more detail including cross sections and wall sections.
- Develop outline drawings of mechanical, electrical, plumbing and fire protection systems.
- Define structural system.
- Prepare an interior materials palette of interior finishes showing character and design for interior components of the project.
- Develop renderings of the exterior and interior for review and presentation to City and Liberty Park.
- Work with the Program Manager to aid in the update of the estimate of the Cost of the Work.
- Prepare outline specifications that identify major materials and systems and establish, in general, their quality levels.

CONSTRUCTION DOCUMENTS

- Based on Owner's approval of the Design Development Documents, and on Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, prepare Construction Documents including drawings and specifications suitable for permitting and pricing. Drawings will incorporate design requirements of governmental authorities having jurisdiction over the project.
- Provide interior design services consisting of the selection of finishes throughout the facility, including preparation of palette boards and necessary meetings and modifications as required.
- Work with the Program Manager to aid in the update of the estimate of the Cost of the Work.

BID / NEGOTIATION

- Assist the Program Manager and Owner in establishing a list of prospective contractors for either competitive bids or negotiated proposals.
- Issue Bidding Documents, answer contractor questions, issue addendum, or clarifications during bidding.
- Identify cost reduction options as part of negotiation or as alternates as project is being bid.
- If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.
- Organize and conduct a pre-bid conference and/or the opening of bids and subsequently documenting and distributing the bidding results.
- Assist Owner and Program Manager in preparing an Owner/Contractor Agreement.

CONSTRUCTION ADMINISTRATION

- Provide administration of the Contract between the Owner and Contractor.
- Observe construction on regular basis for compliance with contract documents.
- Meet at site every two weeks to review construction progress with one meeting a month relative to the Contractor's Application for Payment.
- Review and approve pay requests to confirm percentage complete is commensurate with work completed on site.
- Coordinate with Contractor throughout construction on field questions and clarifications.
- Review and approve contractor submittals including shop drawings and material submittals.
- Process any change orders to contract required or desired for changes in the work or schedule.
- Maintain records relative to changes in the Work.
- Review completed project by conducting final review and punch list of work to be completed for final payment and release of retainage.
- Oversee submittal of project close out documents and record copies.
- Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, conduct a meeting with the owner to review the facility operations and performance.

END – Exhibit A

AIA® Document A232® – 2019

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:

(Name, and location or address)

SHAC/Liberty Park/Pine Ridge Master Plan

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Doster Construction Company, Inc
2100 International Park Drive
Birmingham, AL 35243

THE OWNER:

(Name, legal status, and address)

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

THE ARCHITECT:

(Name, legal status, and address)

TBD

TABLE OF ARTICLES

- | | | |
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ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

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

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their 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 other Contractors, and by the Owner's own forces and Separate Contractors.

§ 1.1.5 Contractors. Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 Separate Contractors. Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§ 1.1.7 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.

§ 1.1.8 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.

§ 1.1.9 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.

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols

governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

§ 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

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

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

§ 2.3.7 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.

§ 2.3.8 The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the

Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, 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 Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and 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 Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

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

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, 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 Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof 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 Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay 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, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, 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, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

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

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

§ 3.9 Superintendent

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

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate

Contractors.

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

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data, and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are 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 Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, 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 reviewed and approved by the Architect.

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

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

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

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

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

§ 3.13 Use of Site

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

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the

condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and 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 AND CONSTRUCTION MANAGER

§ 4.1 General

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

§ 4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and 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. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and 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, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

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

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions

of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.11 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. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect 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 Construction Manager and 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 Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.13 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.14 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

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

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

§ 4.2.19 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 so rendered in good faith.

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

§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request 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 other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

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

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

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

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager 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, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute

Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other 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 with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

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

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other 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's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, 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 delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other 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 Construction Manager, with notice to 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, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

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

§ 7.2 Change Orders

A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, 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 Construction Manager and signed by

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

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

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

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

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

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

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

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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and 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 Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The 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 Construction Manager and 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 Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

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

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

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

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for

Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 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 Construction Manager or Architect.

§ 9.4.6 The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able

to make such representations to the Owner. The Construction Manager or 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 or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

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

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

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

§ 9.5.4 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both 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 or Project 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 Construction Manager and 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 Construction Manager 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 Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

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

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials,

or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so 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 notify the Construction Manager, and the Contractor and Construction Manager shall jointly 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 list, the Architect, assisted by the Construction Manager, 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 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, assisted by the Construction Manager, to determine Substantial Completion.

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

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when

such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly 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 after consultation with the Construction Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, 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 completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project 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 through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully

completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .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; and
- .4 construction or operations by the Owner, Separate Contractors, or other Contractors.

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 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, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any 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, Construction Manager and Architect.

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials

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

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

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

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

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

§ 11.2 Owner's Insurance

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

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

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of

replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their 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 Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and 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 Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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

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

§ 13.4.5 If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the

normal place of testing.

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and 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, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, 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 the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

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

§ 15.1.6 Claims for Additional Time

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

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

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

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

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

§ 15.2 Initial Decision

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

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or

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

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

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

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

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

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

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

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

§ 15.3 Mediation

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

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

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing

that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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

Additions and Deletions Report for

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Changes to original AIA text

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ARTICLE_1 GENERAL_PROVISIONS

§-1.1 Basic-Definitions

§-1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding or proposal requirements.

§-1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their 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 other Contractors, and by the Owner's own forces and Separate Contractors.

§-1.1.5 Contractors. Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§-1.1.6 Separate Contractors. Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§-1.1.7 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.

§-1.1.8 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.

§-1.1.9 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.

§-1.1.10 Initial Decision Maker. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

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

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

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

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

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

~~§ 1.3 Capitalization~~

~~§ 1.4 Interpretation~~

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

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

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

~~§ 1.6 Notice~~

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

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

~~§ 1.7 Digital Data Use and Transmission~~

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments

of Service or any other information or documentation in digital form.-

§-1.8 Building-Information-Models-Use-and-Reliance

ARTICLE-2 OWNER

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§-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 Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.-

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

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

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

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

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

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

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

§-2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,

assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

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

~~§-2.3.3~~ The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

~~§-2.3.4~~ If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

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~~§-2.3.5~~ The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

~~§-2.3.6~~ The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

~~§-2.3.7~~ 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.

~~§-2.3.8~~ The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

~~§-2.4 Owner's Right to Stop the Work~~

~~§-2.5 Owner's Right to Carry Out the Work~~

ARTICLE-3 CONTRACTOR

~~§-3.1 General~~

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

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

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

~~§-3.2 Review of Contract Documents and Field Conditions by Contractor~~

~~§-3.2.1~~ Execution of the Contract by the Contractor is a representation that the Contractor has visited the site,

become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§-3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, 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 Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and 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.

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§-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 Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

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

§-3.3 Supervision-and-Construction-Procedures

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

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

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

§-3.4 Labor-and-Materials

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

§-3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, 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

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§-3.5.1 The Contractor warrants to the Owner, Construction Manager, 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 Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§-3.6 Taxes

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

§-3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay 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, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will

recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, 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, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

§-3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, 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;

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

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

§-3.9 Superintendent

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

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

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

§-3.10 Contractor's Construction and Submittal Schedules

§-3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

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

§-3.10.3 The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§-3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

§-3.11 Documents and Samples at the Site

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§-3.12 Shop Drawings, Product Data, and Samples

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

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

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

§-3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through- 4.2.12. Informational submittals upon which the Construction Manager and Architect are 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 Construction Manager or Architect without action.

§-3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and

Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

§-3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, 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 reviewed and approved by the Architect.

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

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

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

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

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

§-3.13 Use-of-Site

§-3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§-3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§-3.14 Cutting-and-Patching

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

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

§-3.15 Cleaning-Up

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

§-3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§-3.16 Access-to-Work

§-3.17 Royalties,-Patents-and-Copyrights

§-3.18 Indemnification

§-3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and 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.

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§-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_AND_CONSTRUCTION_MANAGER

§_4.1 General

§_4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§_4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

§_4.1.3 Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor. Consent shall not be unreasonably withheld.

§_4.2 Administration_of_the_Contract

§_4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and 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. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§_4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§_4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

§_4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and 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, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§_4.2.6 Communications. The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's

own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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§-4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§-4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

§-4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§-4.2.10 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§-4.2.11 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. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§-4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect 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 Construction Manager and 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 Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§-4.2.13 The Construction Manager will prepare Change Orders and Construction Change Directives.

§-4.2.14 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as

provided in Section 3.7.4.

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§-4.2.15 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§-4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§-4.2.17 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§-4.2.18 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.-

§-4.2.19 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 so rendered in good faith.

§-4.2.20 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§-4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request 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 other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

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

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

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

§-5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager 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.

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

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

§-5.3 Subcontractual-Relations

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§-5.4 Contingent-Assignment-of-Subcontracts

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

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

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

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

ARTICLE-6 CONSTRUCTION-BY-OWNER-OR-BY-SEPARATE-CONTRACTORS

§-6.1 Owner's-Right-to-Perform-Construction-with-Own-Forces-and-to-Award-Other-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 with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§-6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

§-6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

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§-6.2 Mutual-Responsibility

§-6.2.1 The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other 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's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent.

§-6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, 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 delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.

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

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

§-6.3 Owner's-Right-to-Clean-Up

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, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and

Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§_7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§_7.2 Change Orders

- .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 Construction Manager and signed by the Owner, Construction Manager 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.

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§_7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§_7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

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

§_7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 –Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;
- .2 –Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 –Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor

or others;

- .4 –Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 –Costs of supervision and field office personnel directly attributable to the change.

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

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

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

§-7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and 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 Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The 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 Construction Manager and 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 Construction Manager shall 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

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ARTICLE-8 TIME

§-8.1 Definitions

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

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

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

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

§-8.2 Progress-and-Completion

§-8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the

Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§_8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§_8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§_8.3 Delays--and--Extensions--of--Time

§_8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§_8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§_8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE_9 PAYMENTS--AND--COMPLETION

§_9.1 Contract--Sum

§_9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§_9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§_9.2 Schedule--of--Values

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§_9.3 Applications--for--Payment

§_9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§_9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.

§_9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§_9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in

advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

§-9.4 Certificates--for--Payment

§-9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§-9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§-9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

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§-9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§-9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§-9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 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 Construction Manager or Architect.

§-9.4.6 The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§-9.5 Decisions—to Withhold—Certification

§-9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or 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 or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

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

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

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

§-9.5.4 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both 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 or Project 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 Construction Manager and 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 Construction Manager 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 Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

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

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

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

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

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

§-9.7 Failure—of—Payment

§-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 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 notify the Construction Manager, and the Contractor and Construction Manager shall jointly 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 list, the Architect, assisted by the Construction Manager, 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 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, assisted by the Construction Manager, to determine Substantial Completion.

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

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

§-9.9 Partial-Occupancy-or-Use

§-9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly 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 after consultation with the Construction Manager.

§-9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, 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 completion of the Work, the Contractor shall forward to the Construction Manager a notice that the

Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project 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.

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

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

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

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

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

ARTICLE_10 PROTECTION_OF_PERSONS_AND_PROPERTY

§_10.1 Safety_Precautions_and_Programs

§_10.2 Safety_of_Persons_and_Property

§_10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1** –employees on the Work and other persons who may be affected thereby;
- .2** –the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;

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- .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; and
- .4** –construction or operations by the Owner, Separate Contractors, or other Contractors.

§_10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§_10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§_10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§_10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 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, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any 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, Construction Manager 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

§_10.3 Hazardous_Materials

§_10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not

addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner, Construction Manager and Architect of the condition.

§_10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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§_10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§_10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§_10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§_10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§_10.4 Emergencies

ARTICLE_11 INSURANCE_AND_BONDS

§_11.1 Contractor's_Insurance_and_Bonds

§_11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as

otherwise described in the Contract Documents.

§_11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§_11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§_11.1.4 Notice-of-Cancellation-or-Expiration-of-Contractor's-Required-Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§_11.2 Owner's-Insurance

§_11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

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§_11.2.2 Failure-to-Purchase-Required-Property-Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§_11.2.3 Notice-of-Cancellation-or-Expiration-of-Owner's-Required-Property-Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§_11.3 Waivers-of-Subrogation

§_11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-

subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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

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

§-11.5 Adjustment-and-Settlement-of-Insured-Loss

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

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

ARTICLE-12 UNCOVERING-AND-CORRECTION-OF-WORK

§-12.1 Uncovering-of-Work

§-12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their 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 Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such

Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§-12.2 Correction-of-Work

§-12.2.1 Before-Substantial-Completion

§-12.2.2 After-Substantial-Completion

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

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

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

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

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

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§-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

ARTICLE-13 MISCELLANEOUS-PROVISIONS

§-13.1 Governing-Law

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

§-13.2 Successors-and-Assigns

§_13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§_13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§_13.3 Rights_and_Remedies

§_13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§_13.3.2 No action or failure to act by the Owner, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§_13.4 Tests_and_Inspections

§_13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§_13.4.2 If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and 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 Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§_13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

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§_13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

§_13.4.5 If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

§_13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid

unreasonable delay in the Work.

§-13.5 Interest

ARTICLE-14 TERMINATION-OR-SUSPENSION-OF-THE-CONTRACT

§-14.1 Termination-by-the-Contractor

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

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

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

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

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

§-14.2 Termination-by-the-Owner-for-Cause

§-14.2.1 The Owner may terminate the Contract if the Contractor

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

§-14.2.2 When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the

Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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- .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 Construction Manager's and 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, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, 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 the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

§_14.4 Termination_by_the_Owner_for_Convenience

§_14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§_14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

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

§_14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE_15 CLAIMS_AND_DISPUTES

§_15.1 Claims

§_15.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§_15.1.2 Time_Limits_on_Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section_15.1.2.

§_15.1.3 Notice_of_Claims

§_15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section_12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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§_15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section_12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§_15.1.4 Continuing_Contract_Performance

§_15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§_15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§_15.1.5 Claims_for_Additional_Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§_15.1.6 Claims_for_Additional_Time

§_15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§_15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be

documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§_15.1.7 Waiver_of_Claims_for_Consequential_Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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

§_15.2 Initial_Decision

§_15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section_12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§_15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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§_15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§_15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§_15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§_15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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

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

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

§-15.3 Mediation

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

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

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

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

§-15.4 Arbitration

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

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

§_15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§_15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§_15.4.4 Consolidation_or_Joinder

§_15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§_15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§_15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Variable Information

PAGE 1

SHAC/Liberty Park/Pine Ridge Master Plan
Doster Construction Company, Inc
2100 International Park Drive

Birmingham, AL 35243
City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216
TBD

STATE OF ALABAMA

JEFFERSON COUNTY

**FIRST ADDENDUM TO
STANDARD FORM AGREEMENT BETWEEN OWNER AND ARCHITECT,
CONSTRUCTION MANAGER AS ADVISER EDITION
AND GENERAL CONDITIONS OF THE CONTRACT**

WITNESSETH THIS FIRST ADDENDUM TO STANDARD FORM AGREEMENT BETWEEN OWNER AND ARCHITECT, CONSTRUCTION MANAGER AS ADVISER EDITION AND GENERAL CONDITIONS OF THE CONTRACT, by and between the City of Vestavia Hills, Alabama, a municipal corporation, as "Owner" ("City"), and Williams Blackstock Architects, as "Architect", made and entered into on this the _____ day of October, 2025.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama, a municipal corporation, as "Owner," and Williams Blackstock Architects, as "Architect," have executed and delivered a Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition (being "AIA Document B132-2019") (hereinafter referred to as "Architect Contract" and General Conditions of the Contract (being "AIA Document A232-2019") hereinafter referred to as General Conditions") on this date; and

WHEREAS, the Owner and Architect wish to amend the Architect Contract and General Conditions by the execution and delivery of this First Addendum.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the Owner and Architect hereby mutually and expressly amend the Architect Contract and General Conditions as set forth below.

Notwithstanding anything contained in the Architect Contract and General Conditions to the contrary, the Owner and Architect agree to modify, add and/or delete the following terms, provisions, limitations and conditions to said Architect Contract and General Conditions:

I. AMENDMENTS TO THE ARCHITECT CONTRACT

A. Section 8.1.3 of the Architect Contract is amended to read in words and figures as follows:

“§8.1.3. The Architect shall defend, indemnify and hold the Owner and the Owner’s officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys’ fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement.”

B. The following language shall be added as Section 2.6.9:

COMMERCIAL UMBRELLA LIABILITY INSURANCE:

1. Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Worker’s Compensation and Professional Liability to satisfy the minimum limits set forth herein.

2. Minimum Combined Primary Commercial General Liability and Commercial/Excess Umbrella Limits of:

(a) \$5,000,000 per Occurrence

(b) \$5,000,000 Aggregate.

3. Additional Requirements for Commercial Umbrella Liability Insurance:

(a) The policy shall name the City, its City Manager, Mayor and other public officials and employees, as Owner, as additional insureds.

(b) The policy must be on an “occurrence” basis.”

- C. The following language shall be added as Article 10, Section 10.10:

“IMMIGRATION: By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.”

- D. The following language shall be added as Article 10, Section 10.11:

“COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS: Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. General Contractor represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.”

II. **AMENDMENTS TO THE GENERAL CONDITIONS**

- A. Section 3.18.1 shall be amended to read in words and figures as follows:

“§3.18 Indemnification

§3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager’s and 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.”

B. Section 10.3.3 is deleted in its entirety.

C. The following language shall be added to **Section 11.1.2:**

“This is a public works project. Therefore, the General Contractor shall provide and maintain a Performance Bond and Payment Bond as required by Title 39-1-1, *Code of Alabama, 1975.*”

D. Section 3.6 shall be amended to read in words and figures as follows:

“Title 40-23-4(a), *Code of Alabama, 1975*, exempts municipalities in Alabama from the requirement to pay sales tax. The Contractor and Owner shall avoid the payment of sales, use and similar taxes by using the process outlined in Act Number 2013-205 now codified at Title 40-9-14.1, *Code of Alabama, 1975.*”

E. Article 13, Section 13.6 shall be added and read as follows:

“**IMMIGRATION:** By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.”

F. Article 13, Section 13.7 shall be added and read as follows:

“**COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS:** Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest

certifying business entity or to a contract with a value less than \$15,000.00. General Contractor represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.”

III. RATIFICATION OF ARCHITECT CONTRACT AND GENERAL CONDITIONS

The Owner and Architect hereby ratify and reconfirm the terms, provisions, limitations and conditions of the Architect Contract and General Conditions that were not modified or otherwise amended by this First Addendum.

IV. CONFLICT

If any terms, provisions, limitations or conditions of AIA Form Document B132-2019 and AIA Form Document A232-2019 conflict with this First Addendum, then in such event the terms, provisions, limitations and conditions of this First Addendum shall apply.

IN WITNESS WHEREOF, the Owner and Architect have hereunto set their hands and seals all being done in duplicate originals with one (1) original being delivered to each party on the day first above written.

OWNER:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Ashley C. Curry
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

ARCHITECT:
WILLIAMS BLACKSTOCK ARCHITECTS

By _____
Matt Foley
Its _____

ATTESTED

By _____

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Matt Foley, whose name as _____ of Williams Blackstock Architects is signed to the First Addendum to Architect Contract and General Conditions who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Williams Blackstock Architects.

Given under my hand and official seal, this the _____ day of October, 2025.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Addendum to Architect Contract and General Conditions and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of October, 2025.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Addendum to Architect Contract and General Conditions and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of October, 2025.

Notary Public

My Commission Expires:

SEAL

ORDINANCE NUMBER 3298

AN ORDINANCE ACCEPTING A PROPOSAL FOR ARCHITECTURAL SERVICES TO DESIGN A POOL HEATER AND RENOVATIONS/ADDITIONS TO THE CITY OF VESTAVIA HILLS ALBERTO C. ZARAGOZA FIRE STATION #4 AND AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE ANY AND ALL AGREEMENTS FOR THESE DESIGN SERVICES.

WHEREAS, Doster Construction and the City have reviewed proposals from Williams Blackstock Architects (WBA) to provide design services for the addition of a pool heater and renovations to the City of Vestavia Hills Alberto C. Zaragoza Fire Station #4; and

WHEREAS, the scope and fee proposal are acceptable; and

WHEREAS, WBA has agreed to the contract forms asserted in our RFP and legal review process; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept said proposal for architectural services to design a pool heater and renovations/additions to the City of Vestavia Hills Alberto C. Zaragoza Fire Station #4, and Authorizing the Mayor and City Manager to execute any and all agreements for these design services

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The Mayor and City Manager are authorized to accept proposals for architectural services to design a pool heater and renovations/additions to the City of Vestavia Hills Alberto C. Zaragoza Fire Station #4; and
2. The Mayor and City Manager are authorized to execute any and all agreements for these design services; and
3. This Ordinance Number 3298 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 27th day of October, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



**CITY OF VESTAVIA HILLS
FIRE DEPARTMENT
INTER-DEPARTMENT MEMO**

October 13, 2025

To: Jeff Downes, City Manager

From: Marvin Green, Fire Chief

Cc:

RE: Public Hearing - Ordinance Number 3297 - An Ordinance Accepting a SAFER (Staffing for Adequate Fire and Emergency Response) Grant from FEMA that will Fund the Employment of 12 Firefighters and Authorizing the Mayor and City Manager to Execute Any and All Agreements for the Grant Acceptance

Background:

The Vestavia Hills Fire Department applied for a SAFER Grant that would partially fund the employment of 12 new firefighters who would be assigned to a company located at Vestavia Hills Alberto C. Zaragoza Jr., Station Number 4, located at Liberty Park. This effort would satisfy an increased demand for services on the east side of Vestavia Hills and work in conjunction with a station renovation and addition that is underway. The City has been notified that a three-year award of \$1,576,399 has been granted through the SAFER Grant Program. The grant amount represents 75% of compensation and benefit costs for these 12 firefighters for a two-year period and 35% of those costs in year three. This Ordinance would authorize the Mayor and City Manager to execute any and all documents accepting the grant and provide the required financial match during the grant period.

Recommendation:

This grant helps offset the personnel costs associated with standing up the additional company and anticipates a hire date of March 2026 for these new employees. During the completion of the Vestavia Hills Alberto C. Zaragoza Jr., Station Number 4 renovation and addition, the new personnel would be able to complete training and orientation activities within the existing network of fire stations, thus allowing a seamless transition to full activities as the construction activities at Vestavia Hills Alberto C. Zaragoza Jr., Station Number 4 are completed. For these reasons, the staff recommends approval of this grant.

Fiscal Impact:

The financial impact on the FY 26 Budget for unappropriated matching expenses and other additional personal safety equipment is anticipated to be \$200,000. Over the three-year life of the grant, the City's match for compensation and benefit costs is estimated to be \$980,000.

Attachments:

1. Ordinance 3297
2. Email Notification of SAFER 10-1-25
3. FY 2024 Hiring Welcome Letter - Final

ORDINANCE NUMBER 3297

AN ORDINANCE ACCEPTING A 2024 STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE (SAFER) GRANT TO PARTIALLY FUND NEW FIREFIGHTERS FOR VESTAVIA HILLS ALBERTO C. ZARAGOZA JR. FIRE STATION NO. 4; PLEDGING THE REQUIRED LOCAL MATCH OVER THE DURATION OF THE GRANT PERIOD AND AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE ANY DOCUMENTS NECESSARY TO SECURE SAID GRANT

WHEREAS, the Vestavia Hills Fire Department applied for a 2024 Staffing for Adequate Fire and Emergency Response (“SAFER”) Grant that would partially fund the employment of 12 new firefighters who would be assigned to a company located at the Vestavia Hills Alberto C. Zaragoza Jr. Station No. 4, located at Liberty Park; and

WHEREAS this effort would satisfy an increased demand for services on the east side of Vestavia Hills and work in conjunction with a station renovation and addition that is underway; and

WHEREAS the City has been notified that a three-year award of \$1,576,399 has been granted through the SAFER Grant Program. The grant amount represents 75% of compensation and benefit costs for these 12 firefighters for a two-year period and 35% of those costs in year three; and

WHEREAS, this Ordinance Number 3297 would authorize the Mayor and City Manager to execute any and all documents accepting the grant and provide the required financial match during the grant period; and

WHEREAS, this grant helps offset the personnel costs associated with standing up the additional company and anticipates a hire date of March 2026 for these new employees; and

WHEREAS, during the completion of the Vestavia Hills Alberto C. Zaragoza Jr., Station No. 4 renovations and addition, the new personnel would be able to complete training and orientation activities within the existing network of fire stations within the City, thus allowing a seamless transition to full activities as the construction activities at Vestavia Hills Alberto C. Zaragoza Jr., Station Number 4 are completed.; and

WHEREAS, the financial impact on the FY26 budget for unappropriated matching expenses and other additional personal safety equipment is anticipated to be \$200,000. Over the

three-year life of the grant, the City's match for compensation and benefit costs is estimated to be \$980,000; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept said grant within the time limits required by FEMA, pledge the required local match for the duration of the grant and to authorize the Mayor and City Manager to execute any and all documents to secure said match.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The City hereby accepts the terms and conditions of the SAFER grant and pledges the required local match for the duration of the grant period; and
2. The Mayor and City Manager are hereby authorized to execute and deliver all documents needed in order to secure said grant; and
3. The required match would be expensed to the City's general fund budgets for the duration of the grant; and
4. This Ordinance Number 3297 shall become effective immediately upon adoption and approval following posting/publishing pursuant to Alabama law.

DONE, ORDERED, ADOPTED and APPROVED this the 13th day of October, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3297 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 13th day of October, 2025 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills New Merkel House, Vestavia Hills Civic Center and Vestavia Hills Library in the Forest this the _____ day of October, 2025.

Rebecca Leavings
City Clerk

Jeff Downes

From: FEMA GO <no-reply@fema.dhs.gov>
Sent: Thursday, September 25, 2025 11:45 AM
To: Jeff Downes
Cc: Steven R. Michael; Melvin Turner; Jeff Downes
Subject: [External] Award Notification (Application Number: EMW-2024-FF-00756)

Dear Jeffrey,

Congratulations! Your grant application submitted under the Grant Programs Directorate's Fiscal Year (FY) 2024 Staffing for Adequate Fire and Emergency Response (SAFER) Grant has been approved for award.

Please use the FEMA GO system at <https://go.fema.gov> to accept or decline your award. Please note that you will have thirty (30) days from the date of this award notification to either accept or decline the award, and that the award must be accepted or declined by an Authorized Organization Representative (AOR) within the FEMA GO system. Instructions for registering within the system and becoming an AOR are available at <https://www.fema.gov/gmm-training-resources>.

Once you are in the system and made an AOR for your organization, your home page will be the first screen you see. You will see a section entitled My Grants. In this section, please select the award acceptance link for EMW-2024-FF-00756 under Fiscal Year (FY) 2024 Staffing for Adequate Fire and Emergency Response (SAFER) Grant. View your award package and indicate your acceptance or declination of award. If you wish to accept your grant, you should do so immediately. When you have finished, we recommend printing your award package for your records.

If you have questions on using the FEMA GO system, please reach out to the FEMA GO Help Desk (1-877-585-3242). For programmatic questions about your grant, please reach out to the AFG Helpdesk (firegrants@fema.dhs.gov / 1-866-274-0960).

Sincerely,

Grants Management Branch

Staffing for Adequate Fire and Emergency Response (SAFER)

Department of Homeland Security / FEMA



FEMA

Re: FY 2024 SAFER Welcome Letter, EMW-2024-FF-00756: City of Vestavia Hills, Date of Award: 9/25/2025

Dear Award Recipient:

Congratulations! The City of Vestavia Hills has been selected to receive federal funding under the FY 2024 Staffing for Adequate Fire and Emergency Response (SAFER) Program, Hiring Activity. This letter contains important information and instructions necessary for your department to accept or decline the award, preparing for project implementation, as well as instructions on how to manage the grant award successfully.

SAFER Program Office

Your SAFER Program Grant Award has been assigned to a SAFER Program Office Preparedness Officer who will oversee the grant award and serve as your SAFER point of contact. The SAFER Program Office is responsible for the programmatic monitoring of this grant award. As such, your assigned SAFER Preparedness Officer will be responsible for reviewing your payment requests, performance reports, and amendment requests, in addition to providing direct support to you throughout the lifecycle of the grant award. Your assigned Preparedness Officer and their associated contact information is as follows:

David Ferguson, Program Analyst | Assistance to Firefighters Grant Program (SAFER) | Fire, Regional, and Emergency Management Division | Grant Programs Directorate | Resilience | Mobile: (202) 709-0430 | David.Ferguson@fema.dhs.gov

Accepting or Declining the Grant Award

At this time, the SAFER Program Grant Award Package has been created in the FEMA GO (<https://go.fema.gov>) system and is pending official award acceptance or declination by your department. Your department must officially accept or decline the grant award package in FEMA GO within thirty (30) days from the date of notification of the award, which is listed in the subject line of this email. If no action occurs within thirty (30) days of the date of award notification, the FEMA GO system will automatically retract the award. If additional time is needed to consider acceptance or rejection of the award, your department must inform your assigned SAFER Preparedness Officer via email within thirty (30) days of the date of award notification.

Prior to officially accepting or declining the grant award, FEMA strongly encourages your department to download and carefully review the SAFER Program Grant Award Package available to you in FEMA GO. The award package may contain budgetary adjustments, SAFER Program Office notes, and special conditions (see Agreement Articles) added during the award process.

To accept or decline the award, the Authorized Organization Representative (AOR) must login to the FEMA GO system (<https://go.fema.gov>) and navigate to the "My Grants" task card on the FEMA GO

homepage. Within the “My Grants” task card, the grant identification number will be listed under the heading, “Fiscal Year (FY) 2024 Staffing for Adequate Fire and Emergency Response (SAFER),” with an option to “Accept/Decline Award.” Select “Accept/Decline Award” to download the award package, accept or decline the award, and provide comments to FEMA about the award (optional). To assist you with this process, a step-by-step guide on how to accept or decline the award titled, “FEMA GO Award Acceptance Guide,” is attached to this letter and may also be located on the FEMA landing page for FEMA GO Guides for Assistance to Firefighters Grants Programs (<https://www.fema.gov/grants/tools/fema-go/assistance-firefighters-grants>).

FY 2024 SAFER Program Grant User Guide

Please note – the finalized versions of the FY 2024 User Guides are still being updated. As soon as they are released, your Preparedness Officer will provide you with copies via email. This document contains important information designed to help you successfully manage your grant award by detailing the grant requirements, deadlines, payment requests, and report submissions, along with step-by-step instructions for each task. Your department should refer to the FY 2024 SAFER Program Grant User Guide anytime you have questions about the award. This document should be shared and reviewed by all personnel within your department who will be involved in the management and participation of the grant award.

Getting Started on the Grant Award

The SAFER Program provides Federal funding for multi-year projects that take place over specific, consecutive grant years. The consecutive grant years are automatically assigned to each grant award package and indicate the active programmatic and budgetary period of the grant award. This time period is referred to as the Period of Performance (POP). **The POP start date is the first day eligible grant-related costs may be incurred and the first day grant-related activities may begin.** The POP will continue from the first day through the last day of the grant award when all grant-related activities and costs must conclude.

The SAFER Program provides an automatic 180-day recruitment period to all Hiring grant award recipients in order to begin the hiring process in anticipation of a start date for the new SAFER positions. The automatic 180-day recruitment period began on the date the application was approved for award and ends with the start date of the POP. Thus, the recruitment period has already begun. You can find your grant award's POP on the Grant Landing Page in FEMA GO. Please reference the “Period of Performance” section of the User Guide for additional information.

How to Begin the Period of Performance Early

If your department is able to hire all firefighters to fill all of the awarded SAFER positions before the end of the 180-day recruitment period, you may request to start the POP early. To do so, you must first contact your SAFER Preparedness Officer to discuss the amendment process. After discussing the amendment with your Preparedness Officer, you must submit an official amendment request in FEMA GO. The amendment must be submitted at least two (2) weeks prior to the start of the original POP. Early start amendments submitted after the POP has already begun will not be approved. Please note that the POP cannot start later than 180 days after the date of award.

It is important to note that any costs incurred prior to the start of the POP are ineligible for reimbursement under the SAFER Program Grant award. The only costs eligible for reimbursement under the SAFER Program Grant award are the salary and benefit costs incurred beginning on the first day of the POP. All costs incurred during the 180-day recruitment period are ineligible for reimbursement.

Staffing Maintenance Number During the Period of Performance

During the grant POP, your department is required to comply with SAFER Program Grant regulations regarding the Staffing Maintenance Number, which is the combined number of operational fire-suppression positions funded by your department AND the awarded SAFER positions. This combined total equates to the Staffing Maintenance Number which is the number of positions your department agrees to fill and retain during the POP by accepting the grant award.

By signing the grant award, your department agrees to comply with the following regulations:

1. Your department must not incur firefighter layoffs of SAFER-funded or non-SAFER funded positions.
2. Your department must fill all SAFER-funded positions.
3. Your department must maintain the operational staffing number at the level that existed on the date of award and the number of awarded SAFER positions (Staffing Maintenance Number).

In order to determine your department's Staffing Maintenance Number, please complete and submit a "Pre-SAFER Roster" (template attached). The Pre-SAFER Roster must include the name and rank of all paid, full-time operational personnel that support the department's National Fire Protection Association (NFPA) 1710 or NFPA 1720 compliance and who were employees at the time of award. If you have full-time equivalent (FTE) positions that support the department's NFPA 1710 or NFPA 1720 compliance, and are shared by more than one (1) firefighter, the number of FTE positions will need to be clearly identified on the Pre-SAFER Roster as well. Each FTE position will be counted in your minimum required staffing level, not the number of firefighters who fill the FTE. Volunteer personnel and administrative personnel/civilians should not be included on the list.

Please note that an operational position is defined as a position with a primary assignment (more than 50 percent of the time) on a fire suppression vehicle, regardless of collateral duties, in support of the department's NFPA 1710 or NFPA 1720 compliance. Additional information on how to complete the Pre-SAFER Roster can be found in the "Staffing Maintenance Number" section of the User Guide.

Please submit the Pre-SAFER Roster to your Preparedness Officer by email within thirty (30) days using the attached Pre-SAFER Roster. You may use this template or one of your own, as long as all requested information included in the template is provided. Please note that we will not be able to process any amendments, payment requests, or performance reports until the Pre-SAFER Roster has been received and the Staffing Maintenance Number has been established.

Standard Operating Procedures/Guidelines

In accordance with the terms and conditions of this grant award, all activities funded under this award must be governed by formally adopted Standard Operating Procedures (SOPs). As a reminder, all firefighters filling SAFER-funded positions must be appointed (or hired) in the same manner in which your

department would have hired an employee whose salary is paid with non-Federal funds. Your hiring processes and procedures must be followed in accordance with your department's SOPs. Additionally, your department must ensure that you are following all the record retention policies and practices outlined in [2 C.F.R. § 200.334](#).

Please plan to advise your SAFER Preparedness Officer if your department encounters any issues that may appear to prevent the successful completion of the grant award and grant requirements. To expedite a response to all email correspondence, **please include your grant identification number and your department name within the email subject line**. Thank you for your cooperation, and congratulations on receiving a FY 2024 SAFER Program Grant Award!

Sincerely,

David Ferguson

Attached:

1. FY 2024 SAFER NOFO
2. FEMA GO Award Acceptance Guide
3. FY 2024 Pre-SAFER Roster
4. *FY 2024 SAFER User Guide – Hiring Activity (forthcoming in a separate email)*



**CITY OF VESTAVIA HILLS
CITY CLERK
INTER-DEPARTMENT MEMO**

October 13, 2025

To: Jeff Downes, City Manager

From: Rebecca Leavings, City Clerk

Cc: Lori Beth Kearley, Public Services Director
Ethan Fisher, City Engineer

RE: Public Hearing - Resolution Number 5585 - A Resolution vacating a portion of an alley adjacent to 929 Oaklawn Drive and 920 Granbury Road; Chris Burkhalter, owner (*public hearing scheduled for October 27, 2025; 30 day notice given pursuant to Alabama law*)

Background:

The property owner owns property on both sides of alley. One property is 150' wide and the other is 100' wide. A small unimproved alley traverses and divides the properties. Owner desires to construct a new home on the consolidated property once resurveyed into a single lot and has requested vacation of the alley. All utilities have released the alley and powerlines have been redirected into an easement back to the roadway by Alabama Power at the owners' expense. This request will be followed by a resurvey to establish the new power easement and combine all the properties into a single lot.

Recommendation:

Engineering has reviewed this request and approved it.

Fiscal Impact:

na

Attachments:

1. Resolution 5585

RESOLUTION NUMBER 5585

A RESOLUTION APPROVING AND ASSENTING TO A DECLARATION OF VACATION

WITNESSETH THESE RECITALS

WHEREAS, A Declaration signed by the owners of all the lands abutting the following described portion of alley right-of-way situated in the City of Vestavia Hills, Jefferson County, Alabama, vacating said portion of alley right-of-way, has been duly presented to the City Council of the City of Vestavia Hills, Alabama, for assent and approval of said governing body; and

WHEREAS, a copy of said Declaration with map attached is marked as "Exhibit A", attached hereto and incorporated into this Resolution by reference as though set out fully herein; and

WHEREAS, the portion of alley right-of-way above referred to is commonly referred to as "a portion of alley right-of-way" and is more particularly described as follows:

Description Of Partial Vacation Of Alley:

Beginning At The Southwest Corner Of Lot 13-A of a Resurvey of Lots 13 And 14, Block 5, South Birmingham Heights, As Recorded In Map Book: 68, Page 21, In The Office Of The Judge Of Probate Jefferson County, Alabama, Said Point Being A Found 1 1/2" Open Top Pipe On The Easterly Right Of Way Of An Alley; Thence Run N 01 ° 08'48" W Along Said Eastern Alley Right Of Way For A Distance Of 100.14 Feet To A Found 3/4" Crimp Pipe; Thence Run N 86 ° 38'35" W For A Distance Of 14.89 Feet To A Found 3/4" Crimp Pipe On The Western Right Of Way Of Said Alley; Thence Continue Along Said Western Alley Right Of Way, Runs 01 ° 06'31" E For A Distance Of 100.00 Feet To A Found 1 1/2" Capped Rebar Stamped "Weygand Ca 50309"; Thence Leaving Said Western Alley Right Of Way, Run 86 ° 07'43" E For A Distance Of 14.97 Feet To The Point Of Beginning. Said Parcel Being 0.03 Acres, More Or Less

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, that the vacation of the hereinabove described portion of alley right-of-way is assented to and approved and the same is hereby vacated pursuant to the provision of Section 23-4-20 of the Code of Alabama, 1975.

RESOLVED, DONE AND ORDERED, on this the 27th day of October,
2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION

I, the undersigned qualified acting Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 27th day of October, 2025, and that such Resolution is of record in the Minute Book of the City at page _____ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this the _____ day of _____, 2025.

Rebecca Leavings
City Clerk

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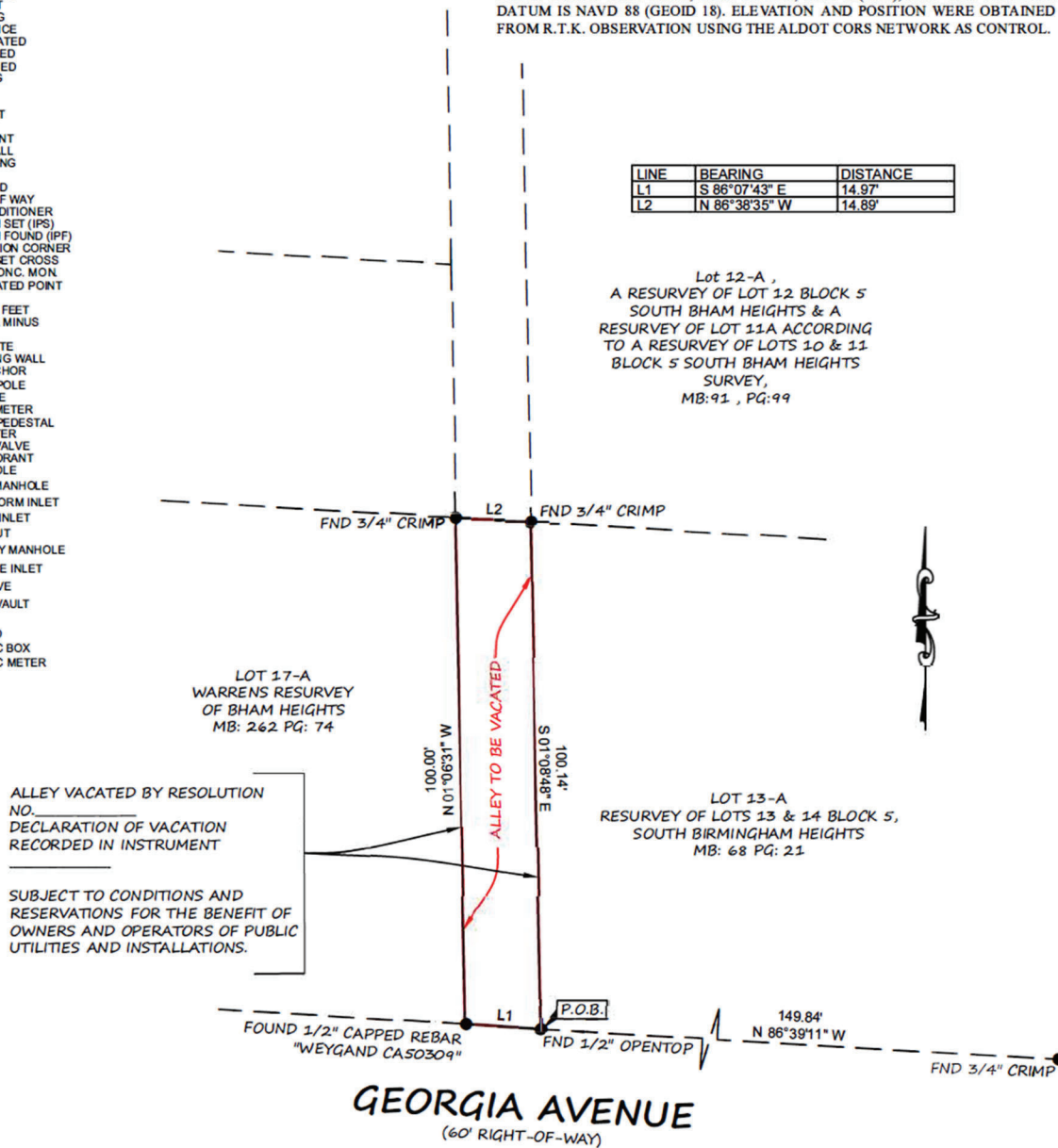
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RIC METER

SURVEY CONTROL:

THE BASIS OF BEARINGS SHOWN ON THIS SURVEY ARE BASED ON ALABAMA STATE PLANE WEST ZONE, GRID NORTH, NAD 83(2011), AND THE VERTICAL DATUM IS NAVD 88 (GEOID 18). ELEVATION AND POSITION WERE OBTAINED FROM R.T.K. OBSERVATION USING THE ALDOT CORS NETWORK AS CONTROL.

LINE	BEARING	DISTANCE
L1	S 86°07'43" E	14.97'
L2	N 86°38'35" W	14.89'

Lot 12-A,
A RESURVEY OF LOT 12 BLOCK 5
SOUTH BHAM HEIGHTS & A
RESURVEY OF LOT 11A ACCORDING
TO A RESURVEY OF LOTS 10 & 11
BLOCK 5 SOUTH BHAM HEIGHTS
SURVEY,
MB:91, PG:99





City of Vestavia Hills

CITY CLERK/PLANNING AND ZONING DEPARTMENT

1032 Montgomery Highway
Vestavia Hills, AL 35216



DECLARATION OF VACATION OF PUBLIC RIGHT-OF-WAY

STATE OF ALABAMA JEFFERSON COUNTY

We, the undersigned, constituting all of the owners of all property abutting 920 Granbury Road alley between 929 Oak Lawn Drive as same appears on the Plat of We will be applying for the resurvey record map after the vacation of this alley our clients own both 920 Granbury Road and 929 Oak Lawn Drive, which Plat is recorded in Plat Book 7, at Page 41, in the Probate Office of Jefferson County, Alabama, do hereby declare that each of said Plats embraced within the boundaries of said 920 Granbury Road alley between 929 Oak Lawn Drive as the same appears of record on the Plat to be vacated, and said 920 Granbury Road alley between 929 Oak Lawn Drive is hereby declared vacated. The undersigned do hereby respectfully represent and warrant as follows:

1. This Declaration of Vacation of 920 Granbury Road alley between 929 Oak Lawn Drive is prepared, executed, delivered and recorded to and in accordance with the provisions of Section 23-4-20 and Section 35-2-54, Code of Alabama, 1975.
2. It is in the best public interest that 920 Granbury Road alley between 929 Oak Lawn Drive be closed and vacated.
3. Such vacation will not deprive other property owners of a convenient and reasonable means of ingress and egress to their property.
4. Said 920 Granbury Road alley between 929 Oak Lawn Drive is situated in the City of Vestavia Hills, Jefferson County, Alabama, and appears at Georgia Ave . A copy of the map reflecting the location of 920 Granbury Road alley between 929 Oak Lawn Drive is attached hereto and incorporated into this Declaration of Vacation as a part hereof.
5. The street address and legal descriptions of all property abutting 920 Granbury Road alley between 929 Oak Lawn Drive and the names and addresses of the owner of said abutting properties are as follows:

A. Owner's Name: Chris Burkhalter

Street Address/Legal Description: 929 Oak Lawn Dr ; LOTS 15 THRU 17 BLK 5 SOUTH BHAM HEIGHTS LAND CO

B. Owner's Name: Chris Burkhalter

Street Address/Legal Description: 920 Granbury Road; LOT 13-A RESUR OF LOTS 13 & 14 BLK 5 SOUTH BHAM HEIGHTS

C. Owner's Name:

Street Address/Legal Description: ;

C. Owner's Name:

Street Address/Legal Description: ;

6. All of the undersigned do hereby declare 920 Granbury Road alley between 929 Oak Lawn Drive to be vacated and respectfully request the assent of the City Council of the City of Vestavia Hills, Alabama, to said vacation of 920 Granbury Road alley between 929 Oak Lawn Drive.

SIGNATURES ATTACHED.



City of Vestavia Hills
Office of the City Clerk

OWNER AFFIDAVIT (This form must be notarized):

I do hereby declare that the following statements are correct concerning the subject property located at: 929 Oaklawn Drive, Vestavia Hills, Alabama and that statements submitted in my application are true and that I am: *(please check all that apply)*.

___ the Property Owner and representing myself in said request.

☒ the Property Owner, but I am authorizing a Representing Agent by the name of: Thomas Dreher Cweygard LLC to represent me in the following request:

And am requesting: (please check)

___ Rezoning Request

___ Preliminary Plat Approval

___ Final Plat Approval

___ Conditional Use Approval

___ Request for Variance

☒ Special Exception

___ Design Review Approval

Signed:

Elisha Burkhalter

Owner Signature/Date

Elisha Burkhalter (Property Owner)

STATE OF ALABAMA

COUNTY OF Clay

Given under my hand and seal

this 20th day of February, 2025

Dena Maxwell

Notary Public



My commission expires 27th day of November, 2025



City of Vestavia Hills
Office of the City Clerk

OWNER AFFIDAVIT (This form must be notarized):

I do hereby declare that the following statements are correct concerning the subject property located at: ~~920 Oaklawn Drive~~ 929 Oaklawn Drive, Vestavia Hills, Alabama and that statements submitted in my application are true and that I am: *(please check all that apply).*

 the Property Owner and representing myself in said request.

☒ the Property Owner, but I am authorizing a Representing Agent by the name of: Thomas Dreher (Weigand LLC) to represent me in the following request:

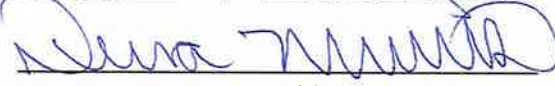
And am requesting: (please check)

 Rezoning Request
 Preliminary Plat Approval
 Final Plat Approval
 Conditional Use Approval

 Request for Variance
☒ Special Exception
 Design Review Approval

Signed:  2/20/2025
Owner Signature/Date
Christopher Burkhalter (Property Owner)

STATE OF ALABAMA
COUNTY OF Alabama

Given under my hand and seal
this 20th day of February, 2025

Notary Public



My commission expires 27th day of November, 2028.

JEFFERSON COUNTY COMMISSION



JAMES A. "JIMMIE" STEPHENS - PRESIDENT
LASHUNDA SCALES
SHEILA TYSON
MIKE BOLIN
T. JOE KNIGHT

CAL MARKERT
CHIEF EXECUTIVE OFFICER

ENVIRONMENTAL SERVICES DEPARTMENT
Suite A300
716 Richard Arrington, Jr. Blvd. N
Birmingham, Alabama 35203
Telephone (205) 325-5496
FAX (205) 325-5981

MEMORANDUM

TO: Kelly Watson
Chief Land Acquisition Agent

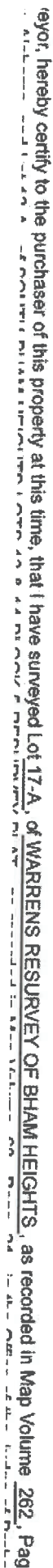
FROM: David Denard, Director *DD*
Environmental Services Department

DATE: April 1, 2025

RE: Proposed Vacation of Alleyway, City of Vestavia Hills
920 Granbury Road and 929 Oaklawn Drive, Vestavia Hills
Lots 13-A and 17-A Block 5 Resurvey of Birmingham Heights; NE 30-18S-2W

This memo responds to an alleyway easement vacation request received for the above referenced property. (said easement is highlighted in blue on enclosed drawing and Exhibit A) It appears, to the best of our knowledge, that no County maintained sanitary sewer exists within this public easement. Based on the aforementioned, we have no objection to the vacation of said public easement insofar as sanitary sewers are concerned. This memorandum should not be construed that this department warrants the accuracy of information provided to us by others.

cc: Emily Kemp, ESD
Ben Pate, ESD
File





APC Document #72308430-001

July 28, 2022

Christopher Steven and Elisha Terry Burkhalter
929 Oaklawn Dr
Vestavia Hills, AL 35216

RE:

Proposed relocation of existing power line on Lot 17-A, according to Warren's Resurvey of Birmingham Heights, as recorded in Map Book 262, Page 74, in the Probate Office of Jefferson County, Alabama. Said portion lying in the Southwest $\frac{1}{4}$ of the of the Northeast $\frac{1}{4}$ of Section 30, Township 18 South, Range 2 West, in Jefferson County, Alabama.

Dear Mr. Mr. and Mrs. Burkhalter,

Alabama Power Company will offer no objections to the proposed relocation of the existing power line at the above address, so long as an exception is made that Alabama Power Company's rights are protected. The total right of way for APCo is 30 feet total, 15 feet on both sides of center line, plus anchors, for any overhead lines, and 10 feet total, 5 feet on both sides of center line, for any underground facilities that may be in place, within this easement area.

Should the need arise for the company to extend additional facilities from any existing lines, Alabama Power Company will acquire the necessary rights of way from the owner of record date.

I trust this letter is sufficient for your needs but if not, please call me at (205)226-1754.

Sincerely,

Dean Fritz

Corporate Real Estate
205-438-4419



April 1, 2025

#618

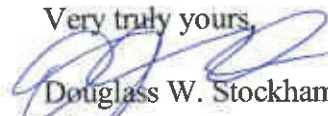
Chris & Elisha Burkhalter
75515 Highway 9
Ashland, AL 36251

To whom it may concern:

You may present this letter to interested parties as evidence that The Water Works Board of the City of Birmingham has no existing facilities within that portion of a utility easement proposing to be vacated within Lots 17A of Warrens Resurvey of Birmingham Heights and South Bham Heights lots 13 & 14 Block 5 Resurvey Plat as recorded in Map Volume 68, Page 21 in Probate Court of Jefferson County Alabama, situated in the SW¼ of the Ne ¼ of Section 30, Township 18 South, Range 2 West, located in the City of Vestavia Hills, Alabama. Therefore, the Water Board has no objection to the vacation of said easement.

Should you have questions or need additional information, please feel free to contact Ms. Antris Betts, at (205) 244-4262; or you may reach Ms. Betts via email at antris.betts@bwwb.org.

Very truly yours,



Douglass W. Stockham, IV
Manager - System Development

AB/dws iv
D.P. J-451-2
Gradient: SMH

C:\Users\katy.hastings\AppData\Local\Microsoft\Outlook\Attachments\00a-cfe71797-588b-4635-b0f6-37ddcc77b4b0\63d86ad6e75fb9a0bdcae57f9d5859097259623955919f71642b354174beae86\196278fd41a0be6f2042d915418a94de24311956692a4732c17d8dda.docx

3600 1st Avenue North, Birmingham, AL 35222
(205) 244-4000 | www.bwwb.org



Spire Alabama Inc.
605 Richard Arrington JR. Blvd.
Birmingham, AL 35203

4/15/2025

Chris Burkhalter
929 Oaklawn Dr.
Vestavia Hills, AL 35216

Re: Proposed vacation of the alleyway easement located within Lots 17A of Warrens Resurvey of Birmingham Heights and South Bham Heights lots 13 & 14 Block 5 Resurvey Plat as recorded in Map Volume 68, Page 21 in Jefferson County Alabama, situated in Section 30, Township 18 South, Range 2 West.

Mr. Burkhalter,

Spire Alabama Inc. has no facilities (and makes no claim of any being there) and has no objection to the vacation of the above said easement.

If a property owner places any structures, decks (attached or free standing), fences, buildings, retaining walls or other personal property within easements that do contain installed natural gas mains or other natural gas facilities, they do so at their own risk and they must comply with applicable law, including the Alabama Underground Damage Prevention Act, set forth in the Alabama Code Title §37, Chapter 15, Sections 1-11, and contact Alabama 811.

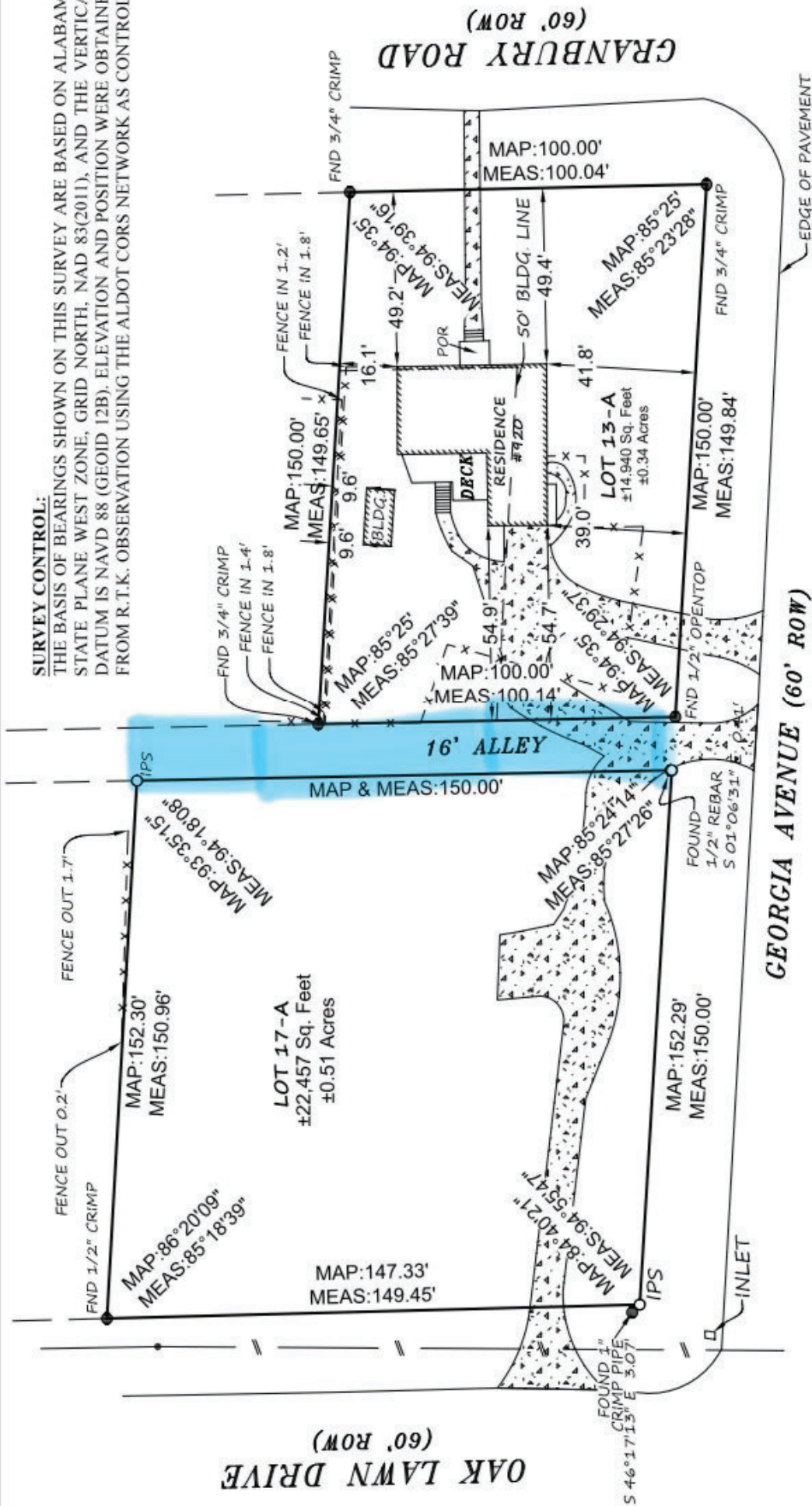
In the event that Spire Alabama Inc. or its successors and assigns, requires the utilization of the easement referenced above for the installation of future facilities necessary rights of way will be acquired from the owner of record.

Sincerely,

Daniel Logan
Right of Way Representative
205.842.3972
Daniel.Logan@spireenergy.com

SURVEY CONTROL:

THE BASIS OF BEARINGS SHOWN ON THIS SURVEY ARE BASED ON ALABAMA STATE PLANE WEST ZONE, GRID NORTH, NAD 83(2011), AND THE VERTICAL DATUM IS NAVD 88 (GEOID 12B). ELEVATION AND POSITION WERE OBTAINED FROM R.T.K. OBSERVATION USING THE ALDOT CORS NETWORK AS CONTROL.



"PROPERTY BOUNDARY SURVEY"



**CITY OF VESTAVIA HILLS
CITY CLERK
INTER-DEPARTMENT MEMO**

October 13, 2025

To: Jeff Downes, City Manager

From: Rebecca Leavings, City Clerk

Cc:

RE: Resolution Number 5586 - A Resolution determining the value of right-of-way vacated by Resolution Number 5585 (*public hearing scheduled for October 27, 2025; notice given pursuant to Alabama law*)

Background:

Alabama law sets for a procedure for the purchase of vacated right-of-way. The calculation was determined that the purchase of the property would equal \$2,088.

Recommendation:

na

Fiscal Impact:

na

Attachments:

1. Resolution 5586

RESOLUTION NUMBER 5586

**A RESOLUTION DETERMINING THE VALUE OF VACATED
RIGHT-OF-WAY**

WHEREAS, on the 27th day of October, 2025, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Resolution Number 5585, vacating a portion of rights-of-way pursuant to the provisions of Section 23-4-20 of the Code of Alabama, 1975; and

WHEREAS, Section 11-49-6, Code of Alabama, 1975 requires: *“as a condition of exercise of such power to vacate, the governing body may require abutting landowners who will directly benefit from such vacation to pay to such municipality a vacation of right-of-way fee equal to the fair market value of the land which will be added to the holdings of such abutting landowners”*; and

WHEREAS, Section 11-49-6, Code of Alabama, 1975 further requires that: *“In no event shall the said vacation of right-of-way fee exceed the assessed value per square foot of all subdivision lots or tracts abutting the right-of-way to be vacated applied to square foot area of real property to be added to the holdings of each abutting landowner paying such fee; provided, however, the determination of such a fee in a lesser amount by the governing body of the municipality shall be conclusive as to its amount”*; and

WHEREAS, the terms of this Resolution shall be based upon the following definitions:

- (1) the “fair market value” of the property is the value of the land as determined by the Jefferson County Board of Equalization; and
- (2) the “assessed value” of the property is determined by the classification of the property (i.e. “Class 1” residential, owner-occupied; “Class 2” residential, non-owner-occupied)

WHEREAS, an analysis of the future use of the property along with a required rezoning and platting in which this private property will be offered for development by the private developer, owner of both adjacent properties; and

WHEREAS, the applicant has requested and the City Council has approved the vacation of said portion of right-of-way at a value of \$2,088.00; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the recommendation of the City Manager and determine the value set at \$2,088.00.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The Council has determined that the value of the property vacated in Resolution Number 5585 is calculated at an amount equivalent to \$2,088.00; and
2. Said value along with all cost of advertising pursuant to Alabama law shall be remitted to the City Clerk prior to filing said vacation in the Office of the Judge of Probate of Jefferson County; and
3. Said Resolution Number 5586 shall become effective immediately upon adoption and approval and posting/publishing as required by Alabama law.

ADOPTED and APPROVED this the 27th day of October, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk



**CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO**

October 13, 2025

To: Jeff Downes, City Manager

From: Melissa Hipp, Asst. to the City Manager

Cc: Jamie Lee, Parks and Leisure Services Director

RE: Public Hearing - Ordinance Number 3299 - An Ordinance accepting a grant from the Alabama Department of Economic and Community Affairs (ADECA) through the Federal Highway Recreational Trails Program for trail improvements at Altadena Valley Park and Authorizing the Mayor and City Manager to Execute any and all documents necessary to secure said grant.

Background:

In accordance with Res. 5521, an application was submitted to the Alabama Department of Economic and Community Affairs (ADECA) for the FY 2025 round of funding through the Recreational Trails Program (RTP) of the Federal Highway Administration (FHWA). That application was for constructing connecting trails, adding trail amenities, and repair/demolition of defunct bridges in the park.

Recommendation:

Fiscal Impact:

RTP provides 80% of the project costs which fall within eligible categories. The funding provided is \$137,506.80 to be matched by City funds of \$34,377.20. City share will come from Fund 20 Capital Projects.

Attachments:

1. 25-RT-53-03 Agreement
2. Resolution 5521
3. Revised CoverSheet-ProjDescNarr-ProjCostEst-SigPg
4. AVP_Section6f map 8-2025 REVISION IN DRAFT
5. Ordinance 3299

STATE OF ALABAMA)
MONTGOMERY, ALABAMA)

AGREEMENT NO. **25-RT-53-03**

SUBAWARD AGREEMENT

This Subaward Agreement ("Agreement") is effective as of the **27th** day of **August 2025** by and between the **City of Vestavia Hills** ("Subrecipient") and the **Alabama Department of Economic and Community Affairs** ("ADECA").

Subrecipient's Name: City of Vestavia Hills

Subrecipient's Unique Entity ID number: VJB5Q5SJ49L7

Federal Award Identification Number ("FAIN"): 693JJ22530000Y940ALRT25303

Federal Award Date: August 27, 2025

Subaward Period of Performance Start Date and End Date: August 27, 2025, through February 28, 2027

Subaward Budget Start Date and End Date: August 27, 2025, through February 28, 2027

Amount of Federal Funds Obligated by this Agreement: \$137,508.80

Total Amount of Federal Funds Obligated to Subrecipient: \$137,508.80

Total Amount of Federal Award: \$137,508.80

Total Project: \$171,886.00

Subrecipient Amount: \$34,377.20

ADECA Percentage: 80%

Subrecipient Percentage: 20%

Project Name: Altadena Valley Park Trails

Federal Award Project Description: Construct 2,850 LF of 6' wide asphalt trail with 1' shoulders. Three new trail segments will connect with an existing golf cart path to create a continuous loop of approximately 6,212 LF. Add rails and make repairs to an existing 70 LF bridge and demolish two unusable bridges. Install solar lighting, signage for wayfinding, and benches/trail amenities at Altadena Valley Park.

Name of Federal Awarding Agency: U.S. Department of Transportation, Federal Highway Administration ("FHWA")

Pass-through Entity: Alabama Department of Economic and Community Affairs

Contact Information for Pass-through Entity's Official: Kenneth W. Boswell, Director of ADECA

Identification of Whether Subaward is Research and Development: No

Indirect Cost Rate for Federal Award: 0%

WITNESSETH THAT:

WHEREAS, ADECA desires to engage the Subrecipient to carry out certain activities and services financed through the Federal Assistance authorized under the State's Recreational Trails Program ("RTP") and 23 U.S.C. § 206.

NOW THEREFORE, the parties hereto do mutually agree as follows:

ADECA hereby agrees to engage the Subrecipient, and the Subrecipient hereby agrees to carry out the activities and services in connection with RTP project **25-RT-53-03** and Federal Award **693JJ22530000Y940ALRT25303**.

The Subrecipient, in assisting ADECA during the period of this Agreement and with the Federal Assistance provided for in this Agreement, shall perform all the necessary services stated in this Agreement.

Upon execution of this Agreement, ADECA agrees to provide Federal Assistance to the Subrecipient under the RTP. Such Federal Assistance is subject to the terms and conditions of this Agreement, all applicable laws, regulations, and all other requirements of ADECA, the State, and the U.S. Department of Transportation, now or hereafter in effect.

A. DEFINITIONS

1. "Agreement" consists of the terms and conditions of this Agreement, below; any of its amendments or supplements; the Letter of Award and related submissions; the Subrecipient's Application and its assurances, certifications, maps, schedules, and other submissions; the *ADECA Recreational Programs Administrative Manual* and its addendums; and Attachment A.

2. "Application" means the Subrecipient's application for FHWA assistance under the RTP that has been approved by ADECA.

3. "State" means the State of Alabama.

4. "Letter of Award" means the letter to the Subrecipient from ADECA setting forth requirements which shall be satisfied by Subrecipient prior to execution of this Agreement.

5. "Subrecipient" means the entity signing this Agreement who is identified in the Letter of Award and who is receiving Federal Assistance through this Agreement as the first tier subrecipient.

B. SCOPE OF SERVICES

1. The Subrecipient agrees to perform and carry out in an expedient, satisfactory, and proper manner, as determined by ADECA, the work activities and administrative

services described in the Application and in this Agreement, unless otherwise expressly directed by ADECA.

2. The Subrecipient agrees to permit and to facilitate ADECA's review of the work activities and administrative services related to this Agreement, at a location as determined by ADECA.

3. The Subrecipient shall submit quarterly progress reports on work activities and administrative services to ADECA. Also, Subrecipient shall submit additional progress reports upon ADECA's request.

4. The Subrecipient agrees to accept responsibility for ensuring compliance with this Agreement by second-tier subrecipients, contractors, and subcontractors related to this Agreement.

C. CHANGES

1. ADECA or the Subrecipient may request changes in the scope of work, the services to be performed, and/or the Subrecipient's compensation under this Agreement. To be effective, such changes shall follow ADECA's rules and policies and must be mutually agreed upon by and between ADECA and the Subrecipient in written amendments to this Agreement.

2. Notwithstanding the above, ADECA may approve a revision to the Subrecipient's budget document for the RTP project under this Agreement without a formal written amendment to this Agreement. In no case shall the revision change the total amount of compensation identified under the terms stated in Section F, below, without a written amendment to this Agreement.

D. PERSONNEL

1. It shall be the responsibility of the Subrecipient, when necessary, to hire employees or contract (or subcontract) with a third party to perform work set out in Section B, above, to include the work activities and administrative services described in the Application. All employees or contractors (or subcontractors) shall be fully qualified and authorized or permitted under Alabama and local law to perform such services.

2. Upon ADECA's request, the Subrecipient shall provide ADECA with a sampling of all contracts (or subcontracts) for said work or services.

E. TIME OF PERFORMANCE

The Subrecipient shall commence performance of this Agreement on **August 27, 2025**. The full Subaward amount shall be expended by **February 28, 2027**.

1. ADECA retains the right to rescind all or part of the Federal Assistance committed by this Agreement should ADECA determine that the Subrecipient (or its contractor or subcontractor) has not adhered to the Application or Agreement.

2. The Subrecipient hereby certifies that it will implement the work activities and administrative services described in the Application and Agreement. Failure to do so may affect the Subrecipient's eligibility to participate in other programs administered by ADECA.

F. METHOD OF PAYMENT

1. ADECA and Subrecipient have agreed upon a total payment of RTP funds not to exceed **\$137,508.80**.

2. Subrecipient will be paid in advance, provided that it maintains a cash management plan and maintains (or demonstrates the willingness and ability to maintain) both written procedures that minimize the time elapsing between the transfer of funds and disbursement by Subrecipient and financial management systems that meet the standards for fund control and accountability in accordance with 2 C.F.R. § 200.305. If the requested advance exceeds thirty (30) days, Subrecipient must provide a written explanation with the invoice requesting advance funds and is subject to approval by ADECA. Source documentation and a follow-up invoice must be submitted to account for the actual expenditures made against advances.

3. Subrecipient will be paid on a reimbursement basis when the above requirements for advances cannot be met, the Federal awarding agency has specific conditions per 2 C.F.R. § 200.305, or Subrecipient requests, in writing, payment by reimbursement.

4. Subrecipient agrees to match the expenditures incurred in the execution of activities stated herein with matching cash or "in-kind" services as shown in the approved RTP Project Cost Estimate (original or revised). Payment of funds is subject to availability of Federal funds awarded to ADECA for RTP.

5. Subrecipient must invoice at least quarterly but may invoice as often as once a month. All invoices must be cleared within sixty (60) days of the close of the Agreement and appropriate backup data must be furnished with each invoice in accordance with ADECA's RTP policy letter(s).

6. In addition to the above clauses, the Subrecipient (and its contractors and subcontractors) shall agree with, and shall adhere to, the terms stated in Section L. herein this Agreement and Attachment A to this Agreement.

G. CLOSEOUT PROCEDURES

Within 60 days of the project completion date (when all work on a project is completed, or the date the project expires, whichever comes first), the Subrecipient shall

follow the ADECA Federal Initiatives and Recreation Division's established RTP closeout procedures when closing the RTP project under this Agreement. The Subrecipient may access ADECA's RTP closeout documents from the ADECA Federal Initiatives and Recreation Division's RTP staff and on the ADECA website at <http://www.adeca.alabama.gov>.

H. RECORD RETENTION

1. Financial records, supporting documents, statistical records, and all other non-Federal entity (to include ADECA, the Subrecipient, contractors, and subcontractors) records pertinent to a Federal Award (to include the RTP project under this Agreement) must be retained for a period of at least three years from the date of ADECA's submission of the final expenditure report on this Federal Award to the U.S. Department of Transportation, or for Federal Awards that are renewed quarterly or annually, from the date of ADECA's submission of the quarterly or annual financial report, respectively, as reported to the U.S. Department of Transportation (as the Federal awarding agency) or pass-through entity (ADECA) in the case of the Subrecipient.

2. Because Federal agencies (to include the U.S. Department of Transportation) may have different record retention requirements, each of ADECA's Divisions will have its own record retention requirements so as to comply with the appropriate Federal record retention requirements. For the ADECA Federal Initiatives and Recreation Division's RTP record retention requirements applicable to this Federal Award and the RTP project under this Agreement, the following record retention requirements are applicable:

The Subrecipient is required to keep all financial records, supporting documents, statistical records, and all other records pertinent to this award in accordance with 2 C.F.R. Part 200 for a period of three years; except the records shall be retained beyond the three-year period if audit findings have not been resolved. The retention period begins from the date of the final expenditure report for the project.

3. When applicable, the Subrecipient, contractors, and subcontractors shall comply with the Alabama Competitive Bid Law (Ala. Code § 41-16-54), which requires that all original bids, together with all documents pertaining to the award of a contract, shall be retained in accordance with a record retention period of at least seven years.

I. INCORPORATION OF SUBMISSIONS MADE UNDER THE LETTER OF AWARD

The submissions made pursuant to the Letter of Award are incorporated into this Agreement by reference to said Letter. The Subrecipient, by execution of this Agreement, further certifies that:

1. The Subrecipient has complied with all applicable requirements of 23 C.F.R. § 771.105, and the Subrecipient's applicable environmental review forms will be submitted for approval by ADECA.

2. The Subrecipient has complied with Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. § 300101) and Executive Order 11592.

3. Where applicable, the Subrecipient has consulted with other State agencies, as appropriate, and has obtained applicable permits and/or has satisfied other conditions imposed from those State agencies which have authority to review RTP project applications, and/or issue permits, and/or retain other responsibilities in regard to local or State projects.

J. OFFICE OF MANAGEMENT AND BUDGET (OMB) UNIFORM GUIDANCE FOR FEDERAL AWARDS

For any and all contracts or grants made by a non-Federal entity under a Federal Award, the non-Federal entity must comply with 2 C.F.R. Part 200, the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which includes but is not limited to, subpart B, General Provisions; subpart C, Pre-Federal Awards Requirements and Contents of Federal Awards; subpart D, Post Federal Award Requirements; subpart E, Cost Principles; subpart F, Audit Requirements; and all accompanying appendices.

K. REQUIRED TERMS UNDER 2 C.F.R. § 200.327

For any and all contracts made by a non-Federal entity under a Federal Award, 2 C.F.R. § 200.327 requires provisions covering the following (as found in Appendix II to Part 200) be included and adhered to as applicable and unless specifically excluded by other Federal regulations:

1. TERMINATION OF AGREEMENT

(a) A clause addressing a termination for cause and convenience must be included in all contracts in excess of \$10,000. The following provisions apply to termination under this grant agreement, whether termination by ADECA or by the Subrecipient. The performance of work under this agreement may be terminated in whole or in part for the following circumstances:

(1) **Termination for Convenience.** This Agreement may be terminated by either party with thirty (30) days written notice. Said notice shall specify the reasons for requesting such termination. If ADECA determines that continuation of the work will serve no useful public purpose, then this Agreement may be terminated by ADECA, and the Subrecipient shall be entitled to necessary expenses incurred through the date of termination or the date services are last provided, whichever occurs first.

(2) **Termination for Cause.** If, through any cause, the Subrecipient shall fail to fulfill in a timely manner its obligations under this Agreement, or if the Subrecipient shall violate any of the covenants, agreements, or stipulations of this Agreement, and such failure or violation is not corrected within fifteen

(15) days after such notice is given by ADECA to the Subrecipient, then ADECA shall thereupon have the right to immediately terminate or suspend this Agreement by giving written notice to the Subrecipient of such termination or suspension and specifying the effective date thereof.

(b) In the event of termination, either for convenience or for cause, all property, finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, computer tapes, computer programs, and reports prepared by the Subrecipient under this Agreement shall, at the option of ADECA, and if in accordance with applicable State and Federal regulations, become the property of ADECA. The Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

(c) Notwithstanding the above, the Subrecipient shall not be relieved of liability to ADECA for damages sustained by ADECA by virtue of any breach of the Agreement by the Subrecipient, and ADECA may withhold any payments to the Subrecipient for the purpose of setoff until such time as the exact amount of damages due ADECA from the Subrecipient is determined.

2. HEARING ON APPEAL

(a) The Subrecipient shall have the right to appeal any determination to terminate made by ADECA; however, if the Subrecipient has failed to submit its appeal, in writing, within ten (10) calendar days from written notice of the termination, and/or has failed to request and receive approval from ADECA for extension of such, then the Subrecipient shall have no further right of appeal.

(b) A hearing shall be conducted at ADECA's offices in Montgomery, Alabama, or any other appropriate location at ADECA's discretion, with a written notification of the time, place, and subject matter provided by ADECA to the Subrecipient.

3. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with 41 C.F.R. § 60-1.4(b) and Executive Order 11246 (as amended by Executive Order 11375), for any Federally assisted construction contract as defined by 41 C.F.R. § 60-1.3, contractors, during the performance of this Agreement, hereby agree as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment,

upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(d) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures

authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Subrecipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in Federally assisted construction work: Provided, that if the Subrecipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Subrecipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Subrecipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Subrecipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Subrecipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future

compliance has been received from such Subrecipient; and refer the case to the Department of Justice for appropriate legal proceedings.

4. COPELAND "ANTI-KICKBACK" ACT

For all prime construction contracts in excess of \$2,000, the Subrecipient or Contractor shall comply with the Copeland "Anti-Kickback" Act, 40 U.S.C. § 3145, as supplemented by U.S. Department of Labor regulations (29 C.F.R. Part 3), which prohibits a Contractor or Subrecipient from inducing any person employed in the construction, completion, or repair of a public work from giving up any compensation to which he or she is entitled to receive. In the event of a suspected or reported violation of the Copeland "Anti-Kickback" Act, ADECA shall report such violation to the Federal awarding agency (U.S. Department of Transportation).

5. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

In the event this contract or grant award is for an amount in excess of \$100,000 and involves the employment of mechanics and laborers, the Subrecipient or Contractor shall comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701–08, specifically 40 U.S.C. § 3702 and § 3704, as supplemented by U.S. Department of Labor regulations (29 C.F.R. Part 5). Said Act includes provisions which provide that a contractor must compute the wages of mechanics and laborers on the basis of a standard 40-hour work week. If an employee works in excess of 40 hours during a work week, the employee must be compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours. Further, neither a laborer nor a mechanic can be required to work in unsanitary, hazardous or dangerous conditions.

6. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and ADECA or the Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment of performance of experimental, developmental, or research work under that "funding agreement," ADECA or the Subrecipient must comply with the requirements of 37 C.F.R. Part 401 and any implementing regulations issued by the Federal awarding agency (U.S. Department of Transportation).

7. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

In the event this contract or grant award is for an amount in excess of \$150,000, the Subrecipient or Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401–7671q, and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251–1387. ADECA shall report any suspected or reported violation to the Federal awarding agency (U.S. Department of Transportation) and to the Environmental Protection Agency ("EPA").

8. DEBARMENT AND SUSPENSION

(a) The Subrecipient is prohibited from using any contractor or subcontractor or vendor that has been debarred, suspended, or otherwise excluded from participation in Federal Assistance programs (Executive Orders 12549 and 12689).

(b) The Subrecipient shall require participants in lower tier covered transactions to include the certification on Government-wide Debarment and Suspension (Non-Procurement) for it and its principals in any proposal submitted in connection with such lower tier covered transactions (see 2 C.F.R. § 180.300). The Excluded Parties List System is available for access from the System for Award Management website at <https://www.SAM.gov>.

(c) The Subrecipient certifies, by entering into this Agreement, that neither it nor its principals, nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement or any contract or subcontract hereto related, by any Federal agency or by ADECA and/or any department, agency, or political subdivision of the State. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Subrecipient.

(d) The Subrecipient certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Agreement, and that it shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The Subrecipient shall immediately notify ADECA if any subcontractor becomes debarred or suspended, and shall, at ADECA's request, take all steps required by ADECA to terminate its contractual relationship with that subcontractor for work to be performed under this Agreement.

9. BYRD ANTI-LOBBYING ACT

In the event this contract or grant award is for an amount exceeding, \$100,000, the Subrecipient or Contractor shall comply with the Byrd Anti-Lobbying Act, 31 U.S.C. § 1352, and shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal Award. Such disclosures are forwarded from tier to tier up to the non-Federal Award (ADECA).

The Subrecipient will require that the language of the paragraph above be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements).

10. PROCUREMENT OF RECOVERED MATERIALS

The Subrecipient must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Pursuant to 2 C.F.R. § 200.323(b), subrecipients are encouraged, to the extent practicable and permitted by law, to purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products, in keeping with Executive Order 14057.

11. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE EQUIPMENT OR SERVICES.

(a) Subrecipients are prohibited from obligating or expending grant funds to:

(1) Procure or obtain covered telecommunications equipment or services;

(2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

(b) As described in Section 889 of Pub. L. No. 115-232, “covered telecommunications equipment or services” means any of the following:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment;

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) For the purposes of this section, “covered telecommunications equipment or services” also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) When a subrecipient accepts a grant subaward, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in 2 C.F.R. § 200.216. The subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment and services beyond the certification provided upon accepting the grant and those provided upon submitting payment requests and financial reports.

12. DOMESTIC PREFERENCES FOR PROCUREMENTS

As appropriate and to the extent consistent with law, the Subrecipient should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and

polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

L. OTHER APPLICABLE FEDERAL AND STATE LAWS

In addition to the above Sections, the Subrecipient agrees that the Subrecipient and its contractors, and subcontractors shall agree with, and shall adhere to, the following:

1. WHISTLEBLOWER PROTECTIONS

An employee of a subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. § 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The Subrecipient must inform its employees in writing of employee whistleblower rights and protections under 41 U.S.C. § 4712.

2. TOBACCO SMOKE

Pub. L. No. 103-227, Title X, Part C, also known as the Pro-Children Act of 1994 (20 U.S.C. § 6083) prohibits smoking in any portion of any indoor facility owned or leased or contracted for by an entity used routinely or regularly for the provision of health, daycare, education, or library services to children under the age of 18 if the services are funded by Federal programs either directly or through State or local governments by Federal grant, contract, loan, or loan guarantee.

3. DRUG-FREE WORKPLACE REQUIREMENTS

In accordance with the provisions of Title V, Subtitle D of Pub. L. 100-690 or Pub. L. 111-350 (41 U.S.C. § 8101 *et seq.*), the “Drug-Free Workplace Act of 1988,” all subrecipients (to include ADECA, the Subrecipient, contractors, and subcontractors) must maintain a drug-free workplace and must publish a statement informing employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and establishing the actions that will be taken against employees violating these prohibitions. Failure to comply with these requirements may be cause for debarment.

4. TRANSPARENCY ACT

Awards under Federal programs are included under the provisions of Pub. L. 109-282, the Federal Funds Accountability and Transparency Act of 2006. Under this statute, the State is required to report information regarding executive compensation and all subgrants, contracts and subcontracts in excess of \$30,000 through the Federal Subaward

Reporting System (<https://www.fsrs.gov/>) and in accordance with the terms found in Federal regulations at 2 C.F.R. Part 170, including Appendix A. Therefore, the Subrecipient, contractors, and subcontractors who meet this threshold will be required to furnish this information to the ADECA Federal Initiatives and Recreation Division which is funding the Subrecipient through this Agreement. Specific reporting processes will be provided by the applicable ADECA Division to the Subrecipient. Active enrollment in the System for Award Management is a condition of payment under Section F., above, of this Agreement.

5. POLITICAL ACTIVITY

The Subrecipient shall comply with the Hatch Act (5 U.S.C. § 1501 *et seq.*) regarding political activity by public employees or those paid with Federal funds. None of the funds, materials, property, or services contributed by the Subrecipient or ADECA under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate in public office.

6. HUMAN TRAFFICKING PROVISIONS

The award is subject to the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, codified in 22 U.S.C. § 7104.

7. PURCHASES OF AMERICAN-MADE EQUIPMENT AND PRODUCTS

(a) **Buy American Act** — As stated in Section 507 of Pub. L. No. 103-333, 108 Stat. 2573, it is the sense of Congress that to the extent practicable, all equipment and product purchases with funds from this Agreement should be American made.

(b) **Buy America Act** — The Subrecipient agrees to abide by the Buy America Act (Pub. L. No. 109-59, 119 Stat. 1464), as amended, codified at 23 U.S.C. § 313, and FHWA's related regulatory policy found in 23 C.F.R. § 635.410. If the total amount of the project is below \$500,000, the Buy America requirements for iron, steel, manufactured product, and construction materials is waived. If the total amount of the project is over \$500,000, the allowable threshold for noncompliant products is the lesser of \$1,000,000 or 5% of total applicable costs for the project. However, if the noncompliant products include iron, steel, manufactured products, the FHWA's threshold amount of 0.1% of the total contract amount or \$2,500 applies.

8. MANDATORY DISCLOSURES

Pursuant to 2 C.F.R. § 200.113, the Subrecipient must promptly disclose whenever, in a timely manner, in connection with the Federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729–33). The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and the Department. Subrecipients are also required to report matters

related to recipient integrity and performance in accordance with Appendix XII of 2 C.F.R. Part 200. Failure to make required disclosures can result in any of the remedies described in 2 C.F.R. § 200.339. (See also 2 C.F.R. Part 180, 31 U.S.C. § 3321, and 41 U.S.C. § 2313.)

9. NON-APPROPRIATION AND PRORATION AND NOT TO CONSTITUTE A DEBT OF THE STATE

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled, and, to the extent permissible by law, the supplier shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. To the extent permissible by law, this cost of cancellation may be paid from any appropriations available for that purpose. In the event that proration of appropriated funds from which the State is to pay the supplier is declared by the Governor pursuant to Ala. Code § 41-4-90, the contractor shall have the option, in addition to the other remedies of the contract, of renegotiating the contract to extend or change payment terms or amounts or terminating the contract. In all circumstances, it is agreed that the terms and commitments of this contract shall not constitute a debt of the State of Alabama in violation of Ala. Const. art. XI, § 213.

10. CONFLICTING PROVISION

If any provision of this Agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this Agreement, be enacted, then that conflicting provision in this Agreement shall be deemed null and void.

11. IMMUNITY AND DISPUTE RESOLUTION

(a) The parties to this Agreement recognize and acknowledge that ADECA is an instrumentality of the State of Alabama, and as such, is immune from suit pursuant to Ala. Const. art. I, § 14. It is further acknowledged and agreed that none of the provisions and conditions of this Agreement shall be deemed to be or construed to be a waiver by ADECA of such Constitutional Immunity.

(b) In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama.

(c) For any and all disputes arising under the terms of this Agreement which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where

appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

12. DISCLAIMER

(a) ADECA specifically denies liability for any claim arising out of any act or omission by any person or agency receiving funds from ADECA whether by this Agreement, a contract, a grant, a loan, or by any other means.

(b) No subrecipient, contractor, or agency performing services under any agreement, contract, grant, or any other understanding, oral or written, other than an actual employee of ADECA, shall be considered an agent or employee of the State of Alabama or ADECA or any Division thereof. The State of Alabama, ADECA, and their agents and employees assume no liability to any subrecipient, contractor or agency, or any third party, for any damages to property, both real and personal, or personal injuries, including death, arising out of or in any way connected with the acts or omissions of any subrecipient, contractor, or agency, or any other person.

13. ACCESS TO RECORDS

The ADECA Director, the Comptroller General of the United States (if Federal funds), the Chief Examiner of Public Accounts, or any of their duly authorized representatives, shall have the right of access to any pertinent books, documents, papers, and records of the Subrecipient for the purpose of making audits, financial reviews, examinations, excerpts and transcripts. This right also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such agreement. This right of access is not limited to the required record retention period but shall last as long as the applicable records are retained.

14. ASSIGNABILITY

The Subrecipient shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of ADECA thereto; provided, however, that claims for money due, or to become due to the Subrecipient from ADECA under this Agreement may be assigned to a bank, a trust company, or other financial institution through a valid court order and without such approval. Notice of such assignment or transfer shall be furnished promptly to ADECA.

15. CONTINGENCY CLAUSE

(a) It is expressly understood and mutually agreed that any ADECA commitment of funds herein shall be contingent upon receipt and availability by ADECA of funds under the Recreational Trails Program for which this Agreement is made. If this Agreement involves Federal funds, the amount of this Agreement will be adjusted by the amount of any Federal recessions and/or deferrals.

(b) Payments made by ADECA under the terms of this Agreement shall not constitute final approval of documents submitted by the Subrecipient or of procedures used in formulating requests for payment to the Subrecipient.

16. CONFLICT OF INTEREST

(a) A conflict of interest, real or apparent, will arise when any of the following has a financial or other interest in the firm or organization selected for award: (i) the individual or a board member of the firm or organization, (ii) any member of the individual's immediate family, (iii) the individual's partner, or (iv) an organization which employs or is about to employ any of the above.

(b) The Subrecipient certifies by signing this Agreement that no person under the Subrecipient's employ or control who presently performs functions, duties, or responsibilities in connection with ADECA of grant-funded projects or programs has any personal and/or financial interest, direct or indirect, in this Agreement, nor will the Subrecipient hire any person having such conflicting interest.

(c) The Subrecipient certifies that it will maintain a written code of standards governing the performance of persons engaged in the award and administration of contracts and subgrants.

17. INDIRECT COST

In accordance with 2 C.F.R. § 200.332(b)(4) and § 200.414, subrecipients of Federal Awards may charge indirect costs to the award unless statutorily prohibited by the Federal program and in accordance with any applicable administrative caps on Federal funding. ADECA will accept a Federally negotiated indirect cost rate. If no approved rate exists, ADECA will collaborate with the subrecipient to determine an appropriate rate. This rate will be either a negotiated rate, which can be based on a prior negotiated rate between a different pass-through entity and the same subrecipient, or the 15% de minimis rate of the modified total direct cost as defined in 2 C.F.R. § 200.1. If basing the rate on a previously negotiated rate, ADECA is not required to collect information justifying this rate but may elect to do so. Subrecipients are allowed to allocate and charge direct costs through cost allocation. However, in accordance with 2 C.F.R. § 200.403, costs must be consistently charged as either indirect or direct costs but not charged as both or inconsistently charged to the Federal Award. Once chosen, the method must be used consistently for all Federal Awards until such time as a negotiated rate is approved by the subrecipients' Federal cognizant agency.

18. AUDIT REQUIREMENTS

(a) All subrecipients of Federal funds must follow the Audit Requirements in the Office of Management and Budget Uniform Administrative Requirements (2 C.F.R. Part 200, subpart F). Subrecipients that expend \$1,000,000 or more during their fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 C.F.R. Part 200. All

entities that have a single audit must submit the reporting package and data collection form to the Federal Audit Clearinghouse in accordance with 2 C.F.R. § 200.512. Additionally, if any subrecipient receives more than \$500,000, collectively, in State General Fund appropriations in its fiscal year, from ADECA, it must have an audit in accordance with Government Auditing Standards (the Yellow Book) and Generally Accepted Auditing Standards established by the American Institute of Certified Public Accountants.

(b) Nothing contained in this Agreement shall be construed to mean that ADECA cannot utilize its auditors regarding limited scope audits of various ADECA funds. Audits of this nature shall be planned and carried out in such a way as to avoid duplication or not to exceed the audit coverage limits as stated in the said Uniform Administrative Requirements.

(c) Copies of all required audits must be submitted to ADECA and the Alabama Department of Examiners of Public Accounts. Copies may be transmitted by email or traditional mail, at the following addresses:

audit@adeca.alabama.gov

Alabama Department of Economic and Community Affairs
ATTENTION: Chief Auditor
401 Adams Avenue
P.O. Box 5690
Montgomery, AL 36103-5690

central.records@examiners.alabama.gov

Alabama Department of Examiners of Public Accounts
ATTENTION: Audit Report Repository
P.O. Box 302251
Montgomery, AL 36130-2251

19. AUDIT EXCEPTIONS / UNRESOLVED QUESTIONED COSTS / OUTSTANDING DEBTS

The Subrecipient certifies by signing this Agreement that it does not have any unresolved audit exceptions, unresolved questioned costs or finding of fiscal inadequacy as a result of project monitoring. It further certifies that no money is owed to any Division of ADECA or to the Federal government under any program where it has not arranged a repayment plan.

20. SUSPENSION OF PAYMENTS

(a) Payments under this Agreement may be suspended in the event that there is an outstanding audit exception under any program administered by any Division of ADECA, or in the event there is an amount owing to any Division of ADECA, or an amount owing to the Federal government under any program administered by any Division of ADECA that is not received in a reasonable and timely manner.

(b) Should the Subrecipient incur an unresolved audit exception or have unresolved questioned costs or finding of fiscal inadequacy as a result of any project monitoring by any Division of ADECA, then ADECA shall not enter into any other contract, agreement, grant, etc., with the Subrecipient until the audit exception or questioned cost or finding of fiscal inadequacy has been resolved.

(c) ADECA shall not enter into another contract, agreement, grant, etc., with any individual, agency, company, or government under any program administered by any Division of ADECA that has not arranged a repayment schedule.

21. DISCLOSURE STATEMENT

Unless otherwise exempt under Ala. Code § 41-16-82, a disclosure statement must be submitted to ADECA for any and all proposals, bids, contracts, or grant proposals in excess of \$5,000.00.

22. COMPLIANCE WITH OTHER APPLICABLE FEDERAL, STATE, AND LOCAL LAWS

(a) In addition to the provisions provided herein, the Subrecipient shall be responsible for complying with any and all other applicable laws, ordinances, codes and regulations of the Federal, State and local governments, including, but not limited to, Alabama procurement law (Ala. Code § 41-16-1 *et seq.*; Ala. Code § 41-4-110 *et seq.*), the Alabama Public Works Law (Ala. Code § 39-1-1 *et seq.*), any State permitting requirements, the Alabama Open Meetings Act (Ala. Code § 36-25A-1 *et seq.*), and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (Ala. Code § 31-13-1 *et seq.*).

(b) In compliance with Alabama Code § 41-16-5, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

(c) By signing this Agreement, the parties affirm that for the duration of this Agreement they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of this Agreement and shall be responsible for all damages resulting therefrom.

(d) By signing the contract, the Subrecipient affirms in compliance with Ala. Code § 41-16-161 that it does not and will not, during the term of the contract, engage in economic boycotts.

(e) The Subrecipient agrees that ADECA shall not be liable for the failure on the part of the Subrecipient and/or any contractor or subcontractor to perform the

said work activities and administrative services and the terms of this Agreement in accordance with all applicable laws and regulations.

(f) The Subrecipient agrees that work on the project will begin within 180 days following the receipt of notification that funds have been approved. The Subrecipient must provide a written request for an extension for the 180-day period within the first 120 days following the notification that funds have been approved.

(g) The Subrecipient agrees that it possesses legal authority to apply for the grant and to finance and construct the proposed facilities. A resolution, motion, or similar action has been duly adopted or passed authorizing the filing of the Application, including all understandings and assurances contained herein, and directing and authorizing the person identified as the Chief Elected Official/Executive Director/President to act in connection with the Application and to provide such additional information as may be required.

(h) The Subrecipient agrees that property acquired with RTP funds will remain open to the public for trail use in perpetuity. Should the property cease to be open to the public for trail use, the Subrecipient must repay the RTP share (specified in this Agreement) of the fair market value of the property at the time of the change in use.

(i) The Subrecipient agrees that development projects located on an easement, leased land, or subrecipient-owned property will remain open to the public for trail use for a minimum of twenty-five (25) years unless otherwise stated in the Application.

(j) The Subrecipient agrees to comply with Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. No. 91-646, 84 Stat. 1894) and the applicable regulations and procedures implementing such Act for all real property acquisitions and, where applicable, shall assure that the Act has been complied with for property to be developed with assistance under this Agreement.

(k) The Subrecipient agrees that Form FHWA-1273 (Required Contract Provisions Federal-Aid Construction Contracts (Attachment A)) will be physically incorporated (not merely referenced) in all contracts, subcontracts, and lower-tier subrecipient agreements (excluding purchase orders, rental agreements, and other agreements for supplies or services related to a construction contract).

(l) The Subrecipient agrees that facilities will be designed to comply with the Architectural Barriers Act of 1968 (Pub. L. No. 90-480, 82 Stat. 718–19) and the U.S. Department of Transportation Section 504 Regulations (49 C.F.R. Part 27).

(m) The Subrecipient will provide for and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to ensure that the completed work conforms with the approved plans and specifications.

(n) The Subrecipient agrees to comply with the provisions of Executive Order 11988, relating to evaluation of flood hazards; Executive Order 11288, relating to the prevention, control, and abatement of water pollution; and Executive Order 11990 relating to the protection of wetlands; and any other applicable EPA regulations.

(o) The Subrecipient agrees to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. No. 93-234, 87 Stat. 975). Section 102(a) requires the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes, for use in any area that has been identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

(p) The Subrecipient agrees to comply with Executive Orders 11625, 12138, and 12432, as follows:

(1) Place qualified small and minority businesses and women's business enterprises on solicitation lists.

(2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

(3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority owned businesses, and women's business enterprises.

(4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority owned business, and women's business enterprises.

(5) Notify ADECA's Office of Minority Business Enterprise of all procurement opportunities to include the purchase of equipment, construction activities, and/or professional services.

(6) Comply with applicable Disadvantaged Business Enterprise (DBE) Program which complies with the U.S. Department of Transportation's standards set forth in 49 C.F.R. Part 26. Notify the Alabama Department of Transportation's DBE Program staff of all procurement opportunities to include

the purchase of equipment, construction activities, and/or professional services.

(7) Require prime contractors, if subcontracts are to be let, to take the affirmative steps listed in (1) through (6).

(q) The Subrecipient shall comply with Property Acquisition and Management Standards of 2 C.F.R. Part 200.

(r) The Subrecipient agrees to comply with the following applicable regulations, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Federally funded project, including:

(1) 49 C.F.R. Part 20, New Restrictions on Lobbying.

(2) FAR Clause 52.203-12, Paragraphs (a) and (b), Limitation on Payments to Influence Certain Federal Transactions.

(3) 2 C.F.R. Part 25, System for Award Management (www.SAM.gov) and Data Universal Numbering System (DUNS).

(4) 2 C.F.R. Part 170, Reporting Subawards and Executive Compensation Information.

(s) The Subrecipient agrees to comply with all applicable standards, orders, or requirements issued under the EPA regulations.

(t) Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights:

(1) The Subrecipient agrees this Federal Award and employees working on this Agreement will be subject to the whistleblower rights and remedies found in 41 U.S.C. § 4712 and FAR Clause 3.908.

(2) The Subrecipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712.

(3) The Subrecipient shall insert the substance of this clause, including this paragraph (3), in all subawards or subcontracts over the simplified acquisition threshold, in accordance with 48 C.F.R. § 52.203-17 (as referenced in 48 C.F.R. § 3.908-9).

23. CIVIL RIGHTS ASSURANCE

(a) The Subrecipient certifies that, as a condition to receiving any Federal assistance from the Department of the Transportation, it will comply with all Federal

laws relating to nondiscrimination. These laws include, but are not limited to: Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352, §§ 601–05, 78 Stat. 252–53) and 49 C.F.R. Part 21, which prohibit discrimination on the basis of race, color, or national origin; Section 504 of the Rehabilitation Act of 1973, as amended, and 49 C.F.R. Part 27, which prohibit discrimination on the basis of handicap; the Age Discrimination in Employment Act of 1975, as amended (Pub. L. No. 94-135, § 302, 89 Stat. 728) (codified in 42 U.S.C. § 6101 *et seq.*), which prohibits discrimination on the basis of age; the Age Discrimination in Employment Act of 1967 (Pub. L. No. 90-202, § 2, 81 Stat. 602) (codified in 29 U.S.C. § 621 *et seq.*); 28 C.F.R. Parts 35 and 36; Limited English Proficiency (Exec. Order No. 13166); the ADA Amendments Act of 2008 (Pub. L. No. 110-325, 122 Stat. 3553) (codified at 42 U.S.C. § 12101 *et seq.*); Title IX of the Education Amendments of 1972 (Pub. L. No. 92-318, § 901, 86 Stat. 235) (codified in 20 U.S.C. § 1681 *et seq.*); and applicable regulatory requirements related to discrimination based on race, color, national origin, handicap or age. The Subrecipient hereby gives assurance that it will immediately take any measures necessary to effectuate this Agreement.

(b) This assurance shall apply to all aspects of the Subrecipient's operations including those parts that have not received or benefited from Federal financial assistance.

(c) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Subrecipient by ADECA, this assurance shall obligate the Subrecipient, or in the case of any transfer of such property, any transferee, for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Subrecipient for the period during which the Federal financial assistance is extended to it by ADECA.

(d) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Subrecipient by ADECA, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date.

(e) The Subrecipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Subrecipient, its successors, transferees, assignees, and subrecipients and the person whose signature appears on the Agreement and who is authorized to sign on behalf of the Subrecipient.

24. PROGRESS REPORTS

The Subrecipient agrees to submit quarterly progress reports to ADECA and at any other time as requested by ADECA. The quarterly reports must include project activities that occurred during the quarter for which you are reporting and the project activities you anticipate occurring during the following quarter. The reports must be signed and dated by the chief elected official, President, Commissioner, or Executive Director. The reporting schedule is as follows:

Quarter Ending	Report Due Date
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, ADECA and the Subrecipient have executed this Agreement as evidenced by their signatures below:

ADECA

Alabama Department of Economic
and Community Affairs


Kenneth W. Boswell, Director

9/5/2025
(Date)

ATTEST:


(Name)

Executive Assistant
(Title)

9/5/2025
(Date)

SUBRECIPIENT

City of Vestavia Hills

Authorized Official

(Date)

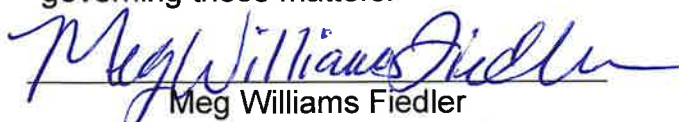
ATTEST:

(Name)

(Title)

(Date)

This contract/agreement has been reviewed for content, legal form, and complies with all applicable laws, rules and regulations of the State of Alabama governing these matters.


Meg Williams Fiedler
General Counsel for ADECA

RESOLUTION NUMBER 5521

A RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE APPLICATION THROUGH THE FY-2025 RECREATIONAL TRAILS PROGRAM FOR TRAIL IMPROVEMENTS AT ALTADENA VALLEY PARK

WHEREAS, Altadena Valley Park has been designated for passive recreational use and is protected in perpetuity for outdoor recreational use per Section 6(f)(3) of the Land and Water Conservation Fund program; and

WHEREAS, in 2021 a master plan concept was developed to include trails, parking, and various other amenities; and

WHEREAS, the Council desires to continue the implementation of the proposed improvements in phases as is feasible, and

WHEREAS, the Recreational Trails Program (FY2025) of the Federal Highway Administration as administered by the Alabama Department of Economic and Community Affairs is a competitive grant which provides 80% of funding with a required 20% match for qualifying projects;

WHEREAS, a project has been identified to create a northern connector trail, as described in Exhibit A to this Resolution; and

WHEREAS, if awarded, the grant would provide \$135,909 with a required match of \$33,977 towards a project with estimated total cost of \$209,000; and

WHEREAS, a project summary has been detailed and marked as Exhibit A, a copy of which has been attached to and incorporated into this Resolution Number 5521 as if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to pursue the above-described grant.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The City Manager is authorized to take all actions necessary to make application to the Recreational Trails Program for the funding as proposed; and
2. That the City of Vestavia Hills hold in reserve thirty-five percent (35%) of the proposed project cost for the purpose of providing for the required matches and expenses which may not qualify for the Recreational Trails Program; and

3. In the event a grant is awarded, the City of Vestavia Hills understands that it will sign assurances to comply with all applicable Federal and State laws, rules, and regulations; and
4. This Resolution Number 5521 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 8th day of July, 2024



Ashley C. Curry
Mayor

ATTESTED BY:



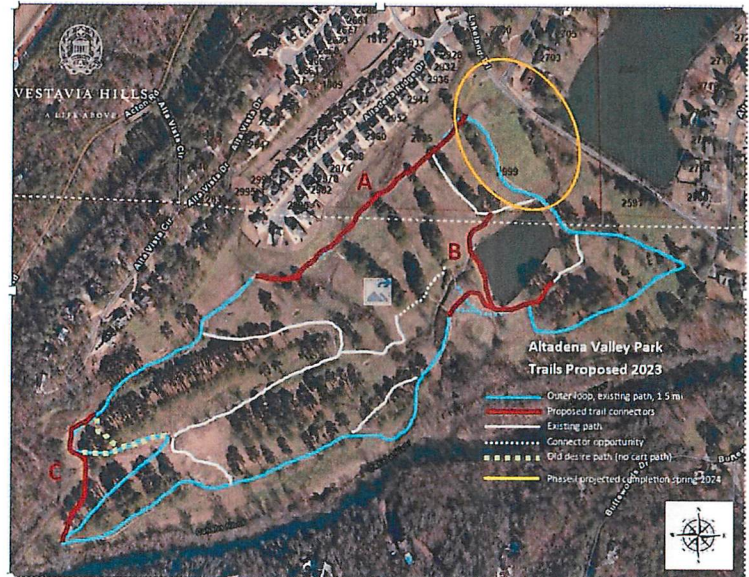
Rebecca Leavings
City Clerk



Altadena Valley Park Northern Trail Loop

Recreational Trails Program FY 2025 Proposal

Altadena Valley Park is an 80+/- acre greenspace which formerly was a golf course that was donated to the City for recreational use. During development of the adjacent property, the cart path connection on the north side was removed. Following acceptance of the property, residents expressed the desire to keep it natural as possible as a passive recreation park. In 2021 a master plan concept was developed which included restoration of a northern connector between the trailhead amenities on the eastern end of the park and the trail system on the western end of the park.



The master plan concept as introduced in 2021 can be seen at altadenavalleypark.com. The City has begun to implement the proposed improvements in phases according to feasibility and available funding. The Recreational Trails Program (RTP), a program of the Federal Highway Administration which is administered through the Alabama Department of Economic and Community Affairs, has been identified as a suitable funding source for trails development in the park. A proposal has been developed for the RTP FY2025 round of funding, as described below. This proposal includes the northern trail connection as well as connections around the lake (towards the future canoe path) and on the far west end of the park.

Project Cost Summary: Altadena Valley Park Northern Trail Connector (FY 2025 RTP Proposal)

RTP Supported Items

Construction	\$147,760
Trail amenities, e.g. benches, bike racks, trash cans, etc.	\$7,350
Program allowed CE&I costs	\$14,776
<u>RTP Eligible Costs</u>	<u>\$169,886</u>

Project Items Not Supported by RTP

Construction Design	\$14,072
Preliminary Engineering	\$21,108
CE&I Disallowable Costs	\$3,968
	<u>\$39,149</u>

PROJECT TOTAL	\$209,035
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RTP Share	\$135,909
-----------	-----------

Local Match 20%	\$33,977
Engineering costs disallowed by the RTP grant	\$39,149
City Outlay (Including 20% match)	\$73,127
Total Local Outlay %	35.0%

RTP provides 80% of cost for construction items, but limits to 10% of construction cost for design, engineering, and construction oversight. Contingency allowances are built into line items.

Application Cover Sheet**Applicant's Name (Organization):** CITY OF VESTAVIA HILLS, ALABAMA**Address:** 1032 MONTGOMERY HWY

VESTAVIA HILLS, AL

ZIP+4: 35216-2806

County: JEFFERSON, SHELBY**FEI Number:** 63-6002218**Unique Entity Identifier (UEI):** VJB5Q5SJ49L7**Project Title:** ALTADENA PARK RECREATIONAL TRAILS**Project Description:**

Construct 2850 LF of 8'wide asphalt trail with 1' shoulders. Three new trail segments would connect with existing golf cart path to create a continuous loop of approximately 6212 LF. Addition of rails and repairs to an existing 70LF bridge and demolition of two unusable bridges. Installation of solar lighting, signage for wayfinding, and benches/trail amenities.

Park Name, if applicable: ALTADENA VALLEY PARK**Park (project location) Address:** 2501 LAKELAND TRAIL

VESTAVIA HILLS, AL

ZIP+4:35243-4212

**Latitude and Longitude
(deg/min/sec):**

33°24'52.7"N, 86°44'41.8"W

**Congressional District
(for project location):**

US-06

**State Senate District
(for project location):**

AL-S016

**State House District
(for project location):**

AL-H048

**Applicant Contact Person and
Title:**

JEFFREY DOWNES, CITY MANAGER

Phone Number: 205.978.0195**Email Address:** jdownes@vhal.org**Grant Administrator or Other
Contact, Title, and Organization:**

MELISSA HIPPI, ASST. TO THE CITY MANAGER

Phone Number: 205.978.0152 / 205.639.4418 (cell)**Email Address:** mhippi@vhal.org

Project Descriptive Narrative

Provide a brief, yet informative, description of the proposed project and address each evaluation criterion on the following pages (provide additional information and documentation as may be needed to support your response to each evaluation criterion).

Project Information

Name of Project: ALTADENA VALLEY PARK RECREATIONAL TRAILS

Trail Length in Linear Feet (L.F.): 2850 (3 SEGMENTS) Trail Width: 8 FT

Trail Surface Type: ASPHALT

Application Type: ☒ **Non-motorized for a Single Use** ☐ Motorized
☐ Non-motorized for Diverse Use ☐ Educational

Type of Applicant: ☒ **City/Town** ☐ County
☐ State ☐ Other

Total Estimated Project Cost	\$ 171,886.00
Grant Amount Requested	\$ 137,508.80_(80% of RTP eligible)
Cash Match	\$ _34,377.20_(20% of RTP eligible)
In-Kind Match	\$ ____
Donation	\$ _____

Brief Description of the Project:

Implementation of 2021 master plan for the redevelopment of the former Altadena Valley Country Club for passive outdoor public recreation. This project proposes to construct 2850 LF of 8' wide asphalt trails with 1' shoulder in three new segments connecting with existing golf cart path to create a continuous loop and to provide for southern trail access to the river. Rehabilitation of an existing 70 LF bridge (repair and addition of rails). Installation of solar lighting, wayfinding and interpretive signage, and trail amenities (benches, trash receptacles). The resulting ~6212 LF loop, along with existing golf cart paths (some connections to be added in later phases) will provide approximately 4 miles of trail connections within the park. Parking expansion is complete, and trail head facilities (restroom and pavilion, with electric power) have been completed summer 2024.

PROJECT NARRATIVE RESPONSES TO THE EVALUATION CRITERIA 1-10 IS ATTACHED

Total Project Cost: \$171,886 Funds Requested: \$137,508.80

Important Note: The maximum grant amount by trail type is **\$200,000** for non-motorized, single-use trails; **\$400,000** for non-motorized, diverse-use trails; **\$524,937** for motorized trails; or **\$87,489** for education projects.

The applicant certifies that the data contained in the application is true and correct; the application has been duly authorized; and the applicant understands that incorrect or incomplete information may cause the application to be rejected.

Ashley C. Curry
(Chief Elected Official's Signature)

Mayor, City of Vestavia Hills, AL
(Title)

Jeffrey Downes
city manager

2/20/25
(Date)

Jeffrey Downes, City Manager

CITY OF VESTAVIA HILLS, AL

Project Cost Estimate

The Recreational Trails Program provides **80/20 matching** fund grants. That is, the RTP will fund up to 80 percent of the project cost and the grant recipient must provide at least 20 percent in the form of cash, in-kind, and/or donated contributions.

Eligible Costs

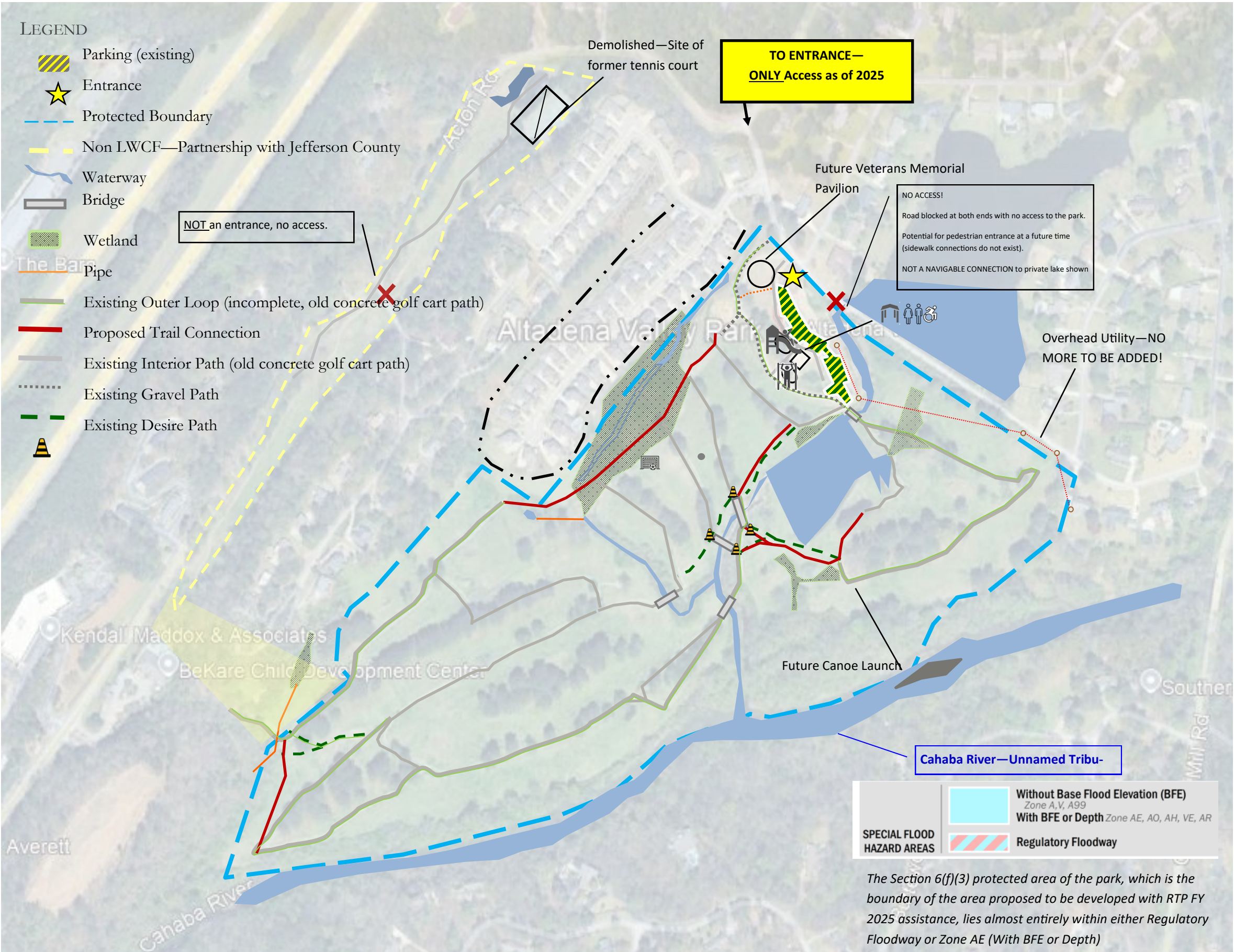
1. Design, engineering, and construction oversight services (**may not exceed 10% of the total construction cost**)
2. Direct labor
3. Special tradesmen secured under a service purchase contract
4. Rental of equipment
5. Construction contracts
6. Project materials
7. Signage¹
8. Land acquisition
9. Professional project administration (grant consultant) (**may not exceed 5% of total project cost**)

PROJECT DEVELOPMENT BUDGET

BUDGET ITEM	TOTAL	RTP SHARE	MATCHING SHARE
Acquisition			
Construction Contracts	\$150,806	\$120,644.80	\$30,161.20
Equipment Rental			
Labor			
Signage	(incl. in supplies/materials)		
Supplies/Materials	\$6,000	\$4,800	\$1,200
Administration			
Engineering	\$15,080	\$12,064	\$3,016
TOTAL PROJECT COST	\$171,886	\$137,508.80	\$34,377.20

¹ Signs which function as traffic control devices must conform with the Manual on Uniform Traffic Control Devices (MUTCD). Part IX of the MUTCD, Traffic Controls for Bicycle Facilities, covers the bicycle related signs, pavement markings, and signals which may be used on highways or bikeways. Part IX is applicable to shared use paths (non-motorized multiple-use trails which may provide a transportation purpose). The publication Standard Highway Signs has the detailed drawings for the highway signs prescribed in the MUTCD. These documents are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

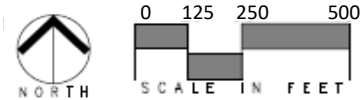
Signs which do not function as traffic control devices are not subject to the MUTCD. However, informational signs and kiosks must take into consideration the needs of various users, such as: people who are blind or who have low vision, people who use wheelchairs, and children.



Altadena Valley Park
Recreational Trails
Improvements
Proposed FY 2025



VESTAVIA
HILLS
A LIFE ABOVE



Prepared For: **WORK IN PROGRESS UPDATE 8.28.25**

Prepared by Melissa N. Hipp, Grants Administrator

Altadena Valley Park

LWCF Section 6(f)(3) Map—**WORK IN PROGRESS 8.28.25**

Outlined in blue dashes are the 77.55 +/- acres under Section 6(f)(3) protection. Green dots indicate an additional 12 acres donated in 2021 are not in the protected boundary; this addition is a fairway connected to the original boundary by golf cart path.

LWCF—Project Number 01-00407 (Wald Park Conversion)
(former address) 2061 Alta Vista Drive, Vestavia Hills, AL 35243-4201
2501 Lakeland Trail, Vestavia Hills, AL 35243-4212

Shelby and Jefferson Counties

33°24'52.7"N, 86°44'41.8"W

Restrictions: Real >>>>> (from the conversion)

Deed Inst. #201512300124951, Jefferson County 12/28/2015

Deed Inst. #20151229000441140, Shelby County 12/29/2015

Deed. Inst. #2016041014, Jefferson County 4/28/2016

Deed Inst. #20161024000389930, Shelby County 10/24/2016

Deed Inst. #2020143317, Jefferson County, 12/16/2020

Deed Ins. #20201216000577730, Shelby County, 12/16/2020

Property owned by City of Vestavia Hills

Note: Other than the recently added trailhead amenities (pavilion with restroom, parking), structures, trails and amenities presently do not exist within the Section 6(f)(3) boundary. See www.altadenavalleypark.com for the 2021 master plan concept.

Approved by:

Ashley C. Curry, Mayor

Date

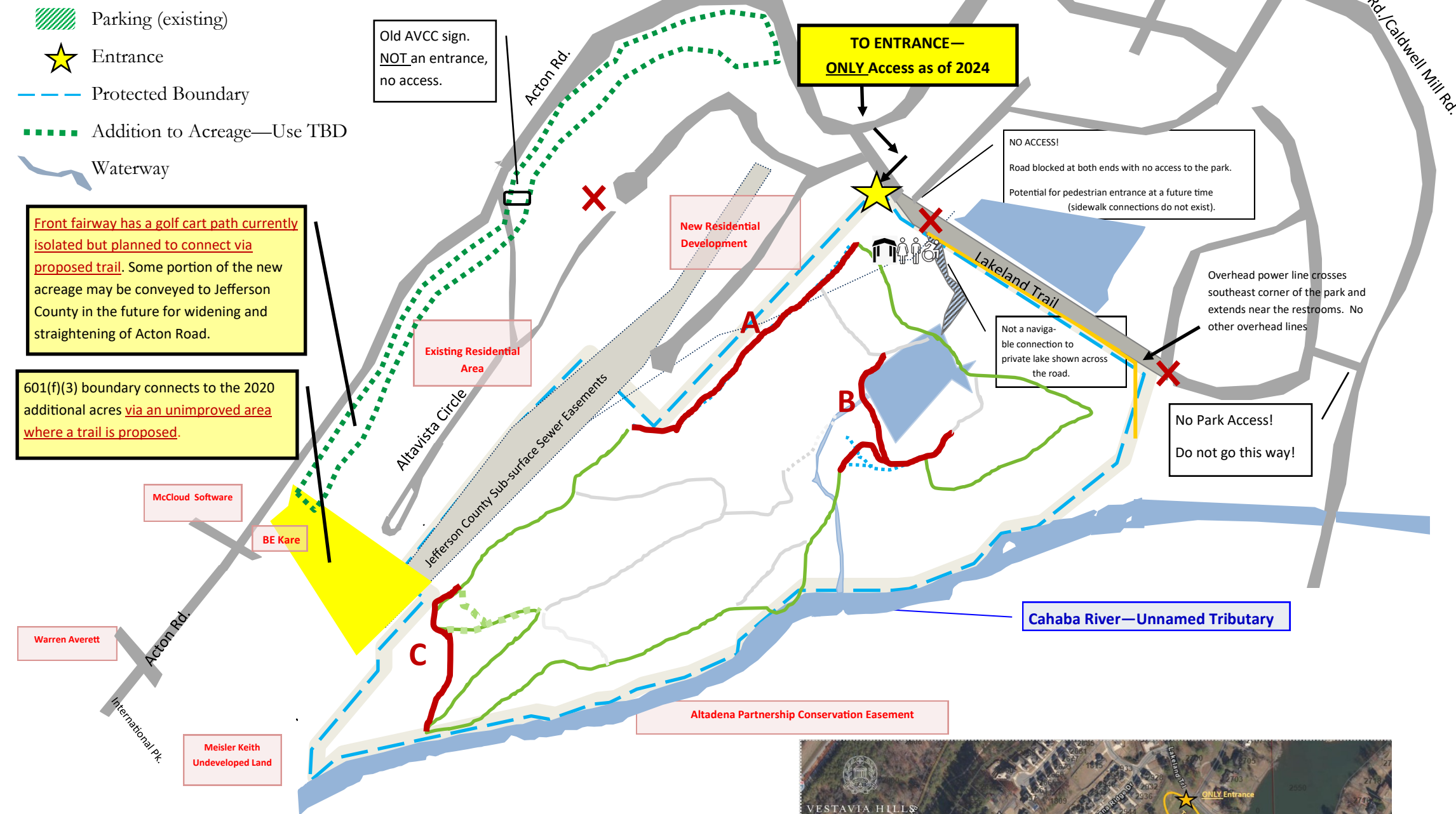
Jeffrey Downes, City Manager

Date





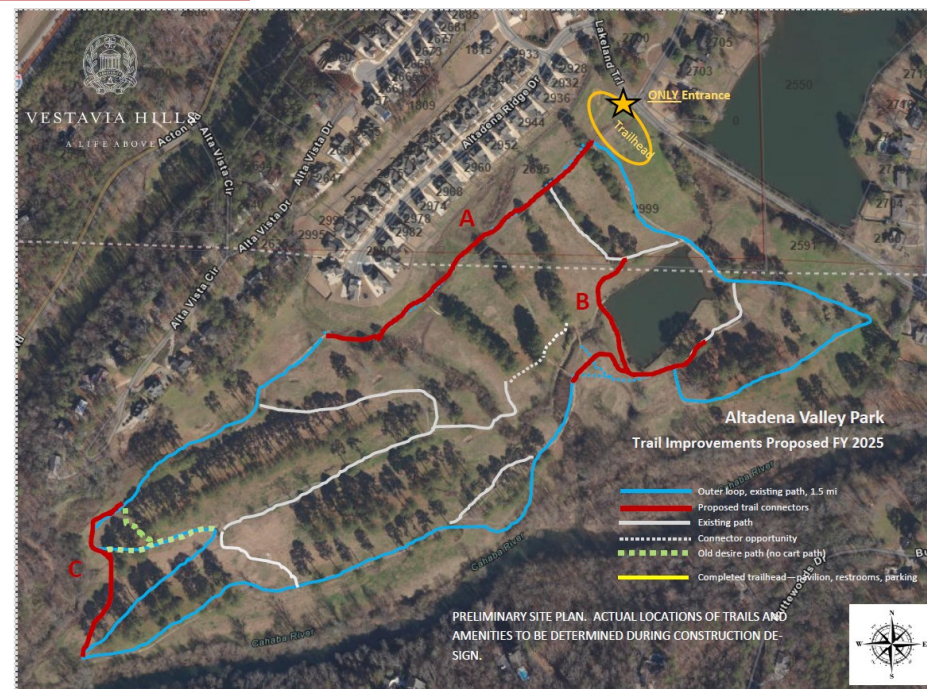
Figure 1. Section 6(f)(3) boundary (dashed blue line) of 80+/- acre property in its current condition (unimproved). For more easily viewed detail of easements, see source map included in the appendix of the electronic version of the Environmental Assessment (Survey-Boundary AVCC, by EDG). Figure on bottom left shows Phase I projected spring 2024.



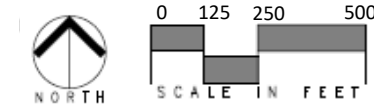
SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) <i>Zone A, V, A99</i>
		With BFE or Depth <i>Zone AE, AO, AH, VE, AR</i>
		Regulatory Floodway

The Section 6(f)(3) protected area of the park, which is the boundary of the area proposed to be developed with RTP FY 2025 assistance, lies almost entirely within either Regulatory Floodway or Zone AE (With BFE or Depth)

-  Outer loop, existing path, ~1 mi
 Proposed trail connectors
 Existing path
 Connector opportunity
 Old desire path (no cart path)
 **BOUNDARY OF AREA TO BE DEVELOPED PROPOSED RTP FY 2025**



VESTAVIA
HILLS
A LIFE ABOVE



Prepared For: Recreational Trails Program FY2025 Application
Altadena Valley Park Recreational Trails Improvements
Preliminary Site Plan
Prepared by Melissa N. Hipp, Grants Administrator

Altadena Valley Park

LWCF Section 6(f)(3) Map—Revised February 21, 2025

Outlined in blue dashes are the 77.55 +/- acres under Section 6(f)(3) protection. Green dots indicate an additional 12 acres donated in 2021 are not in the protected boundary; this addition is a fairway connected to the original boundary by golf cart path .

LWCF—Project Number 01-00407 (Wald Park Conversion)
(former address) 2061 Alta Vista Drive, Vestavia Hills, AL 35243-4201
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Deed Inst. #201512300124951, Jefferson County 12/28/2015
Deed Inst. #20151229000441140, Shelby County 12/29/2015
Deed. Inst. #2016041014, Jefferson County 4/28/2016
Deed Inst. #20161024000389930, Shelby County 10/24/2016
Deed Inst. #2020143317, Jefferson County, 12/16/2020
Deed Ins. #20201216000577730, Shelby County, 12/16/2020
Property owned by City of Vestavia Hills

Note: Other than the recently added trailhead amenities (pavilion with restroom, parking), structures, trails and amenities presently do not exist within the Section 6(f)(3) boundary. See www.altadenavalleypark.com for the 2021 master plan concept.

Approved by:

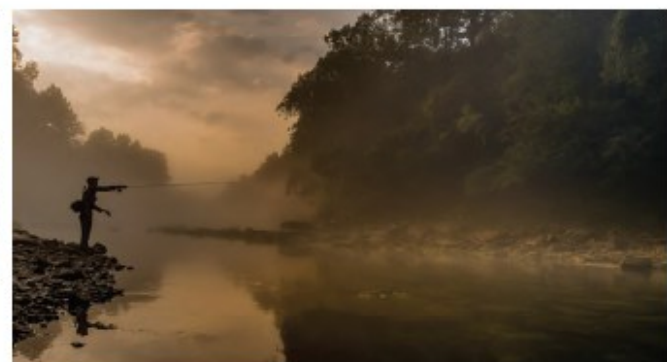
Ashley C. Curry, Mayor

Date _____

Jeffrey Downes, City Manager

Date _____

A collage of eight photographs showing various park amenities: a wooden deck, a lake with a bridge, a flower bed, a gazebo, a log bench, a picnic shelter, a playground, and a pond with a small bridge.



- A. NEW CONNECTION TRAILS
- B. PAVILION & REST SHELTERS
- C. PLAYGROUND
- D. POND RESTORATION
- E. ENTRY SIGN
- F. DISC GOLF
- G. WILDFLOWER MASSES
- H. BRIDGE RESTORATION
- I. DRAINAGE IMPROVEMENTS
- J. PARKING
- K. STORAGE

L. CANOE LAUNCH ACCESS
M. CANOE LAUNCH
N. CANOE LAUNCH TRAILS
O. RESTROOM RESTORATION
P. BMX PUMP TRACK
Q. ARCHERY

- ARBORETUM and BIRDWATCHING
- FISHING AND SCOUTING GROUPS
- SMALL FESTIVALS
- FARMERS MARKET
- FOOD TRUCK RODEO
- GATHERINGS AND COMMUNITY EVENTS
- CONCERTS IN THE PARK
- YOGA

2021 Concept developed by Renta L/A

ORDINANCE NUMBER 3299

AN ORDINANCE ACCEPTING A GRANT FROM THE ALABAMA DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS (ADECA) THROUGH THE FEDERAL HIGHWAY RECREATIONAL TRAILS PROGRAM FOR TRAIL IMPROVEMENTS AT ALTADENA VALLEY PARK AND AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO SECURE SAID GRANT

WHEREAS, the Vestavia Hills City Council found it within the public interest and authorized in Resolution 5521 for the City Manager to make application for Recreational Trails Program of the Federal Highway Administration in order to make trail improvements at Altadena Valley Park; and

WHEREAS, ADECA has awarded the City \$137,508.80 which is 80% of allowable program costs towards the proposed project to add connecting trails, make trail improvements, and repair a bridge; and

WHEREAS, the terms of the grant agreement are attached as Exhibit A; the awarded proposal is attached as Exhibit B, and Resolution 5521 is attached as Exhibit C;

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept said grant within the time limits required, and to authorize the Mayor and City Manager to execute any and all documents to secure said match.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The Mayor and City Manager are authorized to enter agreement with the Alabama Department of Economic and Community Affairs (ADECA); and
2. The City Manager is authorized to expend funds as described within the grant upon adoption of this ordinance; and
3. This Ordinance Number 3299 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 27th day of October, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk