



**Vestavia Hills
City Council Agenda
February 13, 2023
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation - Don Richards
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. Proclamation - Arbor Week - February 20-26, 2023
8. City Manager's Report
9. Councilors' Reports
10. Approval Of Minutes of the January 23, 2023 (regular meeting)

Old Business

New Business

11. Resolution Number 5440 - A Resolution Declaring certain personal property as surplus and authorizing the City Manager to sell/dispose of said property

New Business Requesting Unanimous Consent

12. Ordinance Number 3151 - Authorization for the City Manager and Mayor to execute a contract and provide a supplemental appropriation for the delivery and installation of the Vestavia Hills Sports Hall of Fame exhibit to be located in the new Vestavia Hills Civic Center

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

13. Ordinance 3149 - Rezoning - 3951 Wall Street - Request to rezone property located at 3951 Wall Street from Vestavia Hills R-4 (medium density residential district) to Vestavia Hills B-2 (general business district); Jeff Lett, Owner; Frank Skidmore, Representing
14. Ordinance Number 3150 - An Ordinance Calling an Ad Valorem School Tax Election in the City of Vestavia Hills on May 9, 2023
15. Resolution Number 5441 - A Resolution Authorizing the City Manager to Fund a Special Municipal School Tax Election on May 9, 2023
16. Resolution Number 5445 - A Resolution authorizing a new support structure in the right-of-way adjacent to 2285 Sterling Ridge Circle; 1601 Gentilly Drive; 2500 Chatwood Road; 181 Castlehill Drive; Acquanetta Love, Crown Castle, representing
17. Citizens Comments
18. Recognition of Michael Bolin, Alabama Supreme Court Associate Justice (retired)
19. Time Of Adjournment

SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS

Due to the COVID-19 safety advice given by the ADPH, the City Council work sessions and meetings are available via video-conference and teleconference. If you choose not to attend in person, you may still participate. Following are instructions for three options to participate remotely.

COMPUTER PARTICIPATION (view/participate in real time)

To participate in by videoconference, click <https://us02web.zoom.us/j/5539517181>. When the Zoom.us window opens in your browser, click "Allow" so that the page may open to a waiting room. The host will open the meeting and bring all into the meeting room 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 "Raise Hand" 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.

Using the icons on the Zoom screen, you can:

- Mute/unmute your microphone (far left)
- Turn on/off camera ("Start/Stop Video")
- View Participants – opens a pop-out screen that includes the "Raise Hand" icon that you may use to raise a virtual hand
- Change your screen name displayed in the participant list and video window
- Toggle between "speaker" and "gallery" views – "Speaker view" shows the active speaker; "Gallery view" tiles all of the meeting participants

TELEPHONE PARTICIPATION (view/participate in real time)

To participate by telephone, dial 312.626.6799 and enter the meeting ID: 455 534 3275. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, press *6 on your phone keypad to unmute yourself. 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.

TEXT AND/OR EMAIL (prior to the meeting or in real time)

If you do not wish to join the meeting but would like to ask a question or make a statement regarding an item on the agenda, you may email the City Council directly at City.Council@vhal.org. You may also text your question/statement to City Council at 205.517.1370. Both of these options are available prior to and during each work session and meeting. Be sure to provide your name and address for the record and your comments will be recited to the City Council as the corresponding item is being addressed. Note: As a matter of record, your name and address are required. If identification is not provided, your comment/question will not be presented.

Zoom meetings may be recorded. By participating in the meeting, you are consenting to be recorded. 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 ended 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.

WHEREAS, the economic and aesthetic welfare of the people of Alabama is largely dependent on the trees and forests of the State; and

WHEREAS, everyone in the City of Vestavia Hills benefits either directly or indirectly from trees and forests; and

WHEREAS, trees provide jobs, products, habitat for wildlife, and recreational opportunities; and

WHEREAS, trees are an invaluable physical and psychological addition to the City, as they provide shade, cool the air, reduce noise levels and glare; and

WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas, beautify our community; and improve personal health and well-being; and

WHEREAS, the management of trees through planning, planting, maintenance, timely removal and replacement increases their benefit to our City for both present and future generations; and

WHEREAS, the City of Vestavia Hills has been recognized by the Arbor Day Foundation as a member of the Tree City USA community for 29 years; and

WHEREAS, the Keep Vestavia Hills Beautiful organization, an affiliate of Keep America Beautiful, has committed to integrate into its purpose promoting, planting and caring for community trees as well as engaging in other activities which ensure that trees are considered in community aesthetics.

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 the week of February 20 – 26, 2023 as

ARBOR WEEK

and encourage all residents to participate in tree planting activities during this week.

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 February 2023.

Ashley C. Curry
Mayor

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

JANUARY 23, 2023

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 Pro-Tem called the meeting to order. The City Clerk called the roll with the following:

MEMBERS PRESENT:

Mayor Ashley C. Curry*
Rusty Weaver, Mayor Pro-Tem (*presiding*)
Kimberly Cook, Councilor
Paul Head, Councilor
George Pierce, Councilor

OTHER OFFICIALS PRESENT:

Jeff Downes, City Manager
Patrick H. Boone, City Attorney
Cinnamon McCulley, Asst. City Manager
Rebecca Leavings, City Clerk
Jason Hardin, Deputy Fire Chief
Melvin Turner, III, Finance Director
Zach Clifton, Asst. Finance Director
Marvin Green, Fire Chief*
Christopher Brady, City Engineer
Umang Patel, Court Director*
Jack Wakefield, City Planner/GIS

**present virtually via Zoom or telephone*

Steve Dedmon, Vestavia Hills Chaplain, led the invocation, followed by the Pledge of Allegiance.

APPROVAL OF THE AGENDA

The Mayor Pro-Tem opened the floor for a motion to approve the agenda.

MOTION Motion to approve the agenda as presented was made by Mr. Pierce and seconded by Mrs. Cook. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mayor Curry – yes
Mr. Weaver – yes	motion carried.

ANNOUNCEMENTS, CANDIDATES, GUEST RECOGNITION

- Mrs. Cook stated that the Board of Education will be meeting on January 30, 2023, beginning at 4 PM. Following that meeting, beginning at 6:30 PM, there will be a VHCS Hall of Fame ceremony at Pizitz Middle School.
- Mr. Pierce welcomed Katherine McRee and Linda Parker representing the Chamber of Commerce. Mrs. Parker invited everyone to Viva Vestavia to be held tomorrow night, 6:30 to 9 PM. Tickets are \$50 each and available to purchase from the Chamber of Commerce. There is a silent auction that is currently available online for those who cannot attend the live event, and it can be found on the Chamber's website.
- Mr. Weaver welcomed Mike Shaw, State House Representative District 47.

CITY MANAGER'S REPORT

- Mr. Downes stated that Strategic Planning will be held on February 16-17, 2023. Staff will present the budgetary needs of their departments. He indicated he will send out a draft agenda to hear suggestions from the Council.

COUNCILOR REPORTS

- Mrs. Cook stated that she will be attending Pizitz Career Day on February 3 and she is excited to let the kids know what it is like to serve the City as a Council Member.
- Mrs. Cook stated that, last week, Governor Ivey signed an emergency order directing the St. Clair County Commission to take all reasonable steps to extinguish the Moody Landfill fire that is affecting all parts of Vestavia Hills as well as areas closer to the fire such as Trussville, Moody, and surrounding areas. The EPA has taken charge of efforts to dump soil on the fire, and they are making good progress. She stated she has been following the progress closely on the EPA and ADEM websites as well as on social media and in the news.
- Mrs. Cook held Coffee and Conversation with Mr. Pierce and Jennifer Weaver, Board of Education President who was there to answer questions on the proposed school capital plan. She is looking forward to hosting these opportunities monthly as she had before the busy election season ensued. She will also be attending Viva Vestavia.
- Mr. Pierce announced that he attended the Chamber retreat and reviewed the plans for another active year with Donnie Dobbins as the Chairman. He will also attend Viva Vestavia.
- Mr. Weaver stated that the Planning and Zoning Commission had a meeting last Thursday with an agenda item concerning a proposed rezoning on Wall Street. He indicated there was some robust discussion over this proposal and stated that it will come to the Council with a Commission recommendation for approval in a few weeks.

- Mr. Weaver stated that, on Wednesday of last week, he attended a Jefferson County Mayor's Association meeting on behalf of Mayor Curry in which there were a number of mayors attending. They had an ethics presentation and also learned that Governor Ivey would be doing an emergency order concerning the fire in Moody, St. Clair County. He stated that he was glad to see that area mayors were tuned in to that news and closely following the fighting of this fire.
- Mrs. Cook thanked State House Rep. Danny Garrett and State Sen. Lance Bell for their efforts to get the Governor to sign the emergency order.

FINANCIAL REPORTS

Melvin Turner, III, Finance Director, presented the financial reports for month ending December 2022. He read and explained the reports.

APPROVAL OF MINUTES

The Mayor Pro-Tem stated that the approval of the minutes of the January 9, 2023 (Regular Meeting) are open for approval. He asked for a motion:

MOTION: Motion to approve the minutes of the January 9, 2023 (Regular Meeting) was made by Mrs. Cook and seconded by Mr. Pierce. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mayor Curry – yes
Mr. Weaver – yes	motion carried.

OLD BUSINESS

RESOLUTION NUMBER 5435

Public Hearing – Resolution 5435 – A Resolution Proposing An Increase In An Ad Valorem School Tax Levied In The City Of Vestavia Hills

Mr. Weaver asked Kane Burnett to speak to this issue.

Mr. Kane Burnett, attorney representing the Board of Education, stated that, last December, the Board unanimously approved a request to have the Council call for a referendum for a City tax, for school purposes, because the City is the taxing authority. The Resolution provides a public hearing on whether the referendum should move forward for consideration by the State Legislature. The Legislature convenes on March 7 and the Board will work with the local delegation to authorize the referendum. He indicated that the vote tonight is not an endorsement of the tax increase, but is just an authorization to allow the Legislature to approve a referendum.

MOTION Motion to approve Resolution Number 5435 was made by Mrs. Cook and seconded by Mr. Pierce.

The Mayor Pro-Tem opened the floor for a public hearing. He asked that all comments be limited to 3 minutes.

The following spoke against a tax increase:

- Pat Dewees, 3048 Asbury Park Place;
- David Harwell, 1803 Catala Road;
- Donald Harwell, 1357 Willoughby Road;
- Charles Farrell, 1315 Malibu Place;
- Gayle England, 808 Vestavia Lake Drive.

The following spoke in favor of the tax increase and approval of the Resolution:

- Patrick Boone, 2415 Vestavia Drive.

There being no one further to address the Council, the Mayor Pro-Tem closed the public hearing.

Mrs. Cook delivered the following remarks:

I have attended the community meetings and Board meetings where I have heard very complete descriptions of what the IRebel IFuture plan entails. I have also seen the numbers, and I think the school system makes a very valid case for the need for greater capital funding.

[The need to adequately fund our schools] is a concern I had when I first joined the Council. It was a very different time as our schools had capacity issues. We did not have all the school campuses we have now. We spent all of the reserve money that had been built up over the years just to get our school campuses large enough to have enough classrooms in which to put all the children in our city. We have done a good job on that. The school board has been a good fiduciary of the money we have entrusted to them, and our facilities now have the capacity they need to have to offer the education we expect in Vestavia Hills.

When I first took office in 2016, even then, I was asking the question about capital needs for our school system. At the time we did not have a capital plan. I recall when Dr. Freeman, our Superintendent, was being interviewed for the job. One of the first things I said to him was to mention it was a concern of mine for our school system to have a capital plan to meet future needs, because -- bear in mind -- we were in the process of spending all of the capital we had laid up over the years just to have the capacity we needed. So, this has been a concern of mine for some time, and -- whether Dr. Freeman was responding to my comment to him that afternoon, or the comments or other constituents, or the needs he saw when he took office -- the Board has now developed a capital plan, which I think is very prudent. Within the last couple of years, I mentioned If the schools didn't have enough to operate the schools and provide for capital

expenditures, that we [the public] needed to know about it sooner rather than later, because it does take time for that money to accumulate so you can actually build the buildings.

They have made their case – they have made it to me, they have made it to the community. I am sure there will be other meetings and I trust the Board will answer questions from the community about the need and how the money will be spent. I understand the concerns I have heard tonight, and every one of those will be considered by the taxpayers when they go to the polls to vote on this in early May.

Mr. Pierce indicated that the Council is not going to vote on this for the Board. The voting residents of this City will make that decision. Mr. Pierce stated he has lived here for decades, raised three children in these schools, and currently has nine grandchildren in this same system. His wife was an educator for years and so are others in his family. He encouraged everyone to do an internet search for 1Rebel 1Future and study the plan, ask questions, and get information.

Mr. Weaver stated that the Board has a long way to go to educate everyone on what this entire referendum is about, and welcomed that Dr. Freeman and Board President Jennifer Weaver who were present. He stated every single question and concern is addressed in the presentation if people will reach out and look it up. He stated that if the City does not fund the schools, they will die, and effects will go all the way to the top because the educators and top administrators will go elsewhere where their ideas for improving education have the resources to bring them to fruition.

Mayor Curry stated that he appreciates the comments of the public and the Council. and the clear understanding that the Council is not voting for approval of a tax increase.

There being no one further to address the Council on this issue, Mayor Pro-Tem called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mayor Curry – yes
Mr. Weaver – yes	motion carried.

ORDINANCE NUMBER 3145

Public Hearing – Ordinance Number 3145 – Rezoning – 4553 Pine Tree Circle; Lot 15, Topfield Subdivision; Rezone From Vestavia Hills B-1.2 (Neighborhood Mixed Use District) To Vestavia Hills O-1 (Office Park District); Mark Hancock, Owner

MOTION Motion to approve Ordinance Number 3145 was made by Mrs. Cook and seconded by Mr. Pierce.

Mr. Weaver explained that this property is going from Planned Commercial to Office.

The Mayor Pro-Tem opened the floor for a public hearing. There being no one further to address the Council, the Mayor Pro-Tem closed the public hearing and called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mayor Curry – yes
Mr. Weaver – yes	motion carried.

ORDINANCE NUMBER 3146

Public Hearing – Ordinance Number 3146 – Rezoning – 3105 Blue Lake Drive; Lot 26, Topfield Subdivision; Rezone From Vestavia Hills R-1 (Low Density Residential District) To Vestavia Hills O-1 (Office Park District); Lauren Savage, Owner

MOTION Motion to approve Ordinance Number 3146 was made by Mrs. Cook and seconded by Mr. Pierce.

Mr. Weaver stated that this request is for construction of an office building.

The Mayor Pro-Tem opened the floor for a public hearing. There being no one further to address the Council, the Mayor Pro-Tem closed the public hearing and called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mayor Curry – yes
Mr. Weaver – yes	motion carried.

ORDINANCE NUMBER 3147

Public Hearing – Ordinance Number 3147 – An Ordinance Establishing Voting And Polling Places For All Municipal Elections For The City Of Vestavia Hills, Alabama

MOTION Motion to approve Ordinance Number 3147 was made by Mr. Pierce and seconded by Mr. Head.

Mr. Downes explained that these city election polling places mirror Jefferson County as much as possible.

The Mayor Pro-Tem opened the floor for a public hearing.

Robert DeBuys, 3467 Mossbrook Lane, asked about voters who vote at Overton Baptist Church. Ms. Leavings explained since that building is not located in the City, those will probably vote at Cahaba Heights Baptist Church.

Gayle England, 808 Vestavia Lake Drive, stated that a lot of people do not know where to go to vote. At the last election, many voted here at City Hall and she asked know if those would vote at Civic Center now. Ms. Leavings indicated that voter cards would be sent to voters listed as registered in the City to let everyone know their polling places.

There being no one further to address the Council, the Mayor Pro-Tem closed the public hearing and called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mayor Curry – yes
Mr. Weaver – yes	motion carried.

ORDINANCE NUMBER 3148

Public Hearing – Ordinance Number 3148 – An Ordinance Adopting And Enacting Supplement V For The Vestavia Hills Code Of Ordinances Republished 2013

MOTION Motion to approve Ordinance Number 3148 was made by Mr. Pierce and seconded by Mrs. Cook

Mr. Downes stated this is refreshing the Code of Ordinances for Vestavia Hills.

The Mayor Pro-Tem opened the floor for a public hearing. There being no one further to address the Council, the Mayor Pro-Tem closed the public hearing and called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mayor Curry – yes
Mr. Weaver – yes	motion carried.

NEW BUSINESS

NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)

FIRST READING (NO ACTION TO BE TAKEN AT THIS MEETING)

- None.

CITIZEN COMMENTS

Robert DeBuys, 3467 Mossbrook Lane, stated that he does not think the Legislature should have a vote in whether or not there is a tax increase in this City. He indicated that this is the third time that the Council has had a vote to increase taxes in this City, and raising taxes three separate times is not a conservative value. His comments identified the city sales tax increase, statewide gas tax increase, and the increase in property taxes discussed at this meeting.

Mrs. Cook stated that, of the three tax increases that Mr. DeBuys mentioned, only one was voted on by this Council, and that increase was passed with overwhelming public approval to fund the Community Spaces and Infrastructure Plan.

David Harwell, 1803 Catala Road, stated that he is following up on an email from last week concerning C-Spire that is running optic cable through his neighborhood. Apparently, these contractors are told to dig holes in the ROW adjacent to these properties and dug holes and didn't even use them. He stated that these contractors are supposed to put these properties back as they found them but they do not do that.

Donald Harwell, 1357 Willoughby Road, asked when there will be another forum for speaking about the tax. Ms. Leavings stated the next public hearing on the matter will be the last meeting in February. He stated that, at a previous meeting, he had spoken about an easement that is located in the middle of his property which contained aerial lines and poles and indicated that the utilities are not maintaining these easements. He stated that the City collects money based on gross revenues from services allowed by the easement that splits his property, and he cannot seem to contact these utilities. He indicated that he wanted contacts including names, emails, address and phone numbers, for the engineers for Alabama Power, AT&T, Spectrum, and similar.

Pat Dewees, 3048 Asbury Park Place, asked if, for City elections, citizens vote at the same places as they do for regular elections. Ms. Leavings explained that there are 12 or 13 polling places at which Vestavia Hills residents vote in federal/state/county elections. However, in City elections, the polling place must be located within the city limits so some people will need to go to a City polling place.

The Mayor Pro Tem asked for a motion to adjourn. At 7:02 PM, Mr. Pierce made a motion to adjourn. The meeting adjourned at 7:03 PM.

Rusty Weaver
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk



**CITY OF VESTAVIA HILLS
POLICE DEPARTMENT
INTER-DEPARTMENT MEMO**

February 13, 2023

To: Jeff Downes, City Manager

Cc:

From: Rebecca Leavings

RE: Resolution Number 5440 - A Resolution Declaring certain personal property as surplus and authorizing the City Manager to sell/dispose of said property

Background:

Please request that the City Council deem the following property surplus at the next meeting:

There are 2 vehicles at VTE can be declared surplus. The vehicle info is below:

- 2012 Tahoe VIN # 1GNLC2E0XCR188087 93,000 miles (SRO 2)
- 2015 Tahoe VIN # 1GNLC2EC8FR523128 161,555 miles (FS 2)

Recommendation:

Fiscal Impact:

Attachments:

1. Resolution 5440
2. surplus 1-25-23

RESOLUTION NUMBER 5440

**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 5440 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 13th day of February, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

1/25/23

To: Rebecca Leavings

From: Cpl. Wilson

Re: Surplus City Property

Please request that the City Council deem the following property surplus at the next meeting:

There are 2 vehicles at VTE can be declared surplus. The vehicle info is below:

- 2012 Tahoe VIN # 1GNLC2E0XCR188087 93,000 miles (SRO 2)
- 2015 Tahoe VIN # 1GNLC2EC8FR523128 161,555 miles (FS 2)

Please contact me with any questions or concerns.

Thanks, Cpl. Wilson ext. #1110

1/25/23

To: Rebecca Leavings

From: Cpl. Wilson

Re: Surplus City Property

Please request that the City Council deem the following property surplus at the next meeting:

There are 2 vehicles at VTE can be declared surplus. The vehicle info is below:

- 2012 Tahoe VIN # 1GNLC2E0XCR188087 93,000 miles (SRO 2)
- 2015 Tahoe VIN # 1GNLC2EC8FR523128 161,555 miles (FS 2)

Please contact me with any questions or concerns.

Thanks, Cpl. Wilson ext. #1110



**CITY OF VESTAVIA HILLS
CITY CLERK
INTER-DEPARTMENT MEMO**

February 13, 2023

To: Mayor Curry and Members of the City Council

Cc:

From: Jeff Downes

RE: Ordinance Number 3151 - Authorization for the City Manager and Mayor to execute a contract and provide a supplemental appropriation for the delivery and installation of the Vestavia Hills Sports Hall of Fame exhibit to be located in the new Vestavia Hills Civic Center

Background:

The Vestavia Hills Sports Hall of Fame organization has advocated and coordinated an effort for a permanent display to be located in the new Civic Center along a wall on the second floor. The allocated space was provided during the design and construction of the new Civic Center and has been reviewed by Parks and Leisure Service staff members in concurrence with operational plans. The project has been given a project number (ADM2301) for tracking purposes by the City Finance Department. Furthermore, a construction, delivery and installation proposal has been received from Method 1 and a legal opinion has been provided by City Attorney Patrick Boone that procurement of said display is not subject to the competitive bid law.

Recommendation:

As such, it is recommended that said proposal be accepted by the City Council and authority given to the City Manager and Mayor to accept the proposal subject to the City's standard public works specimen contract.

Fiscal Impact:

The estimated cost of the proposed effort is \$136,312.67. The FY 2023 approved general fund budget has a \$75,000 appropriation for the project (01-10-7600-000-100) and the City has received a \$50,000 donation from the Community Service Fund thanks to the advocacy of Senator Jabo Waggoner. Given the small shortfall of the anticipated costs, a supplemental appropriation is requested for the difference in the estimated cost and an approval for the total project costs not to exceed \$150,000.

Attachments:

1. Ordinance 3151
2. PH Boone Legal Opinion to City Manager December 20 2022b
3. Ordinance 3151 Exhibit B Proposal, Drawings

ORDINANCE NUMBER 3151

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A CONTRACT AND PROVIDE A SUPPLEMENTAL APPROPRIATION FOR THE DELIVERY AND INSTALLATION OF THE VESTAVIA HILLS SPORTS HALL OF FAME EXHIBIT TO BE LOCATED IN THE NEW VESTAVIA HILLS CIVIC CENTER

WHEREAS, The Vestavia Hills Sports Hall of Fame organization has advocated and coordinated an effort for a permanent display to be located in the new Civic Center along a wall on the second floor; and

WHEREAS, the allocated space was provided during the design and construction of the new Vestavia Hills Civic Center and has been reviewed by Parks and Leisure Service staff members in concurrence with operational plans; and

WHEREAS, the project has been given a project number (ADM2301) for tracking purposes by the City Finance Department; and

WHEREAS, special thanks are extended to Senator Jabo Waggoner for securing said \$50,000 donation for the Community Service Fund; and

WHEREAS, A construction, delivery and installation proposal has been received from Method 1 and a legal opinion has been provided by City Attorney Patrick Boone that procurement of said display is not subject to the competitive bid law (a copy of which is marked as Exhibit A and attached to this Ordinance Number 3151 as if written fully therein); and

WHEREAS, said proposal has been reviewed by the City Manager and recommended for approval by the Mayor and City Council as submitted funding as detailed for a cost of \$150,000 (a copy of which is marked as Exhibit B, attached to and incorporated to this Ordinance Number 3551 as if written fully therein), as follows:

FY2023 General Fund Budget	\$ 75,000
Community Service Fund donation	50,000
Supplemental Adj (Res 5442)	<u>25000;</u>
Total Appropriation	\$ 150.000; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to accept said proposal and supplemental appropriation.

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

1. The City Manager is authorized to expend up to \$150,000 for the construction and installation of the Vestavia Hills Sports Hall of Fame to be installed at the Vestavia Hills Civic Center; and
2. Said funding shall be expensed to the General Fund Budget for a total of \$75,000; Community Fund donation of \$50,000 and a supplemental appropriation of an estimated \$25,000 shall be expensed to the City's Capital Projects Fund for a total estimated cost of \$150,000; and
3. The Mayor and City Manager are authorized to execute and deliver any documentation needed to execute said construction and installation; and
4. This Ordinance Number 5441 shall become effective immediately upon approval.

APPROVED and ADOPTED this the 23rd day of February, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

E-Mail: patrickboone@bellsouth.net

December 20, 2022

By Electronic Mail

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Vestavia Hills Sports Hall of Fame

Dear Mr. Downes:

You have requested my written legal opinion regarding whether or not the City of Vestavia Hills, Alabama ("City") may spend public funds in the amount of \$129,812.67 to decorate the interior entrance hall of the newly constructed community Civic Center by establishing a Vestavia Hills Sports Hall Fame to commemorate athletic achievements of citizens without advertising for competitive bids. The purpose of this letter is to respond to your inquiry.

I. FACTS

A. ORDINANCE NUMBER 2702: On April 10, 2017, the City Council of the City of Vestavia Hills, Alabama approved and adopted Ordinance Number 2702, which reads in pertinent part as follows:

"1. PROMOTION OF PUBLIC WELFARE: The City Council of the City of Vestavia Hills, Alabama, a municipal corporation, finds and determines that the purchase by the City of the hereinafter described real property and improvements (the "Property") will promote the health, safety and general welfare of the City:

That certain real estate and improvements situated at 1090 Montgomery Highway in the City of Vestavia Hills, Alabama 35216 consisting of approximately 5.27± acres, together with a two-story building containing approximately 63,128 square feet sometimes referred to as the "Gold's Gym property"...

2. **PURCHASE PRICE:** The City of Vestavia Hills, Alabama hereby agrees to pay the sum of Nine Million One Hundred Thousand Dollars (\$9,100,000.00) to purchase the Property.”

B. ACQUISITION OF GOLD’S GYM PROPERTY: On May 31, 2017, the City purchased the Gold’s Gym property by virtue of that certain Special Warranty Deed filed in the office of the Judge of Probate of Jefferson County, Alabama on June 8, 2017 and recorded at Instrument #2017057813, Pages 1-5.

C. CONSTRUCTION OF COMMUNITY CIVIC CENTER: Since acquiring the Gold’s Gym property, the City has spent approximately \$17,300,000.00 to construct a new community Civic Center for use and benefit of the 35,000 citizens residing in the City. All work for that construction was performed in strict compliance with the Alabama Public Works law set forth at Title 39-1-1, et seq., *Code of Alabama, 1975*, and the Alabama Public Works Competitive Bid Laws set forth at Title 39-2-1, et seq., *Code of Alabama, 1975*.

D. CITY BUDGET FOR YEAR 2022-2023: On September 12, 2022, the City Council enacted Ordinance Number 3118 approving and adopting the municipal budget for the year beginning October 1, 2022 and ending September 30, 2023 as required by Title 11-43A-29, *Code of Alabama, 1975*.

E. SPECIAL PROJECTS: Section 01-10-7600-000-100 of the Budget entitled “Special Projects” appropriated the sum of Seventy-five Thousand Dollars (\$75,000.00) for commemorative achievements.

The City Council, with the enactment of Ordinance Number 3118, adopting a budget found and determined that it would promote the public interest and welfare to commemorate achievements by citizens in various sports by establishing a Vestavia Hills Sports Hall of Fame in the interior entrance hall of the new community Civic Center.

F. CONTRIBUTION BY THE STATE OF ALABAMA: The State of Alabama, through the efforts of Senator Jabo Waggoner, contributed the sum of Fifty Thousand Dollars (\$50,000.00) to help establish the Vestavia Hills Sports Hall of Fame in the new community Civic Center building.

G. METHOD-1 INTERIORS: Method-1 Interiors is a division of Culton Companies, Inc. that creates branded environments in all shapes and forms. Method-1 Interiors has offered to create, fabricate and install a Vestavia Hills Athletics Hall of Fame for and in consideration of the sum of One Hundred Twenty-nine Thousand Eight Hundred Twelve and 67/100 Dollars (\$129,812.67). A copy of the fabrication proposal by Method-1 Interiors is attached hereto, marked as Exhibit 1 and is incorporated into this legal opinion by reference as though set out fully herein.

II. LEGAL ISSUE ONE

A. LEGAL ISSUE ONE: Is the creation, fabrication and installation of a Vestavia Hills Sports Hall of Fame in the interior of the entrance hall of the community Civic Center intended to commemorate athletic achievements by citizens a “public purpose”?

B. ALABAMA LAW: Before answering Legal Issue One, it is first necessary to review Alabama law.

1. Constitution of Alabama of 1901: Section 94, as amended by Amendments 112 and 558, of the *Constitution of Alabama* provides as follows:

“The Legislature shall not have power to authorize any county, city, town or other subdivision of this state to lend its credit or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever.”

2. Municipalities in Alabama May Spend Public Funds Only for Public Purposes: Municipalities in Alabama may spend public funds only for public purposes. The Supreme Court of Alabama has interpreted the language of Sections 93 and 94 of the *Constitution of Alabama* to allow appropriations of public funds when the appropriation is used for public purposes. *Alabama Constitution* amend. 93; *Alabama Constitution* amend. 94; *Slawson v. Alabama Forestry Comm’n*, 631 So.2d 953 (Ala.1994). *Opinion of the Justices No. 269*, 384 So.2d 1051 (1980); *Stone v. State*, 251 Ala. 240 (1948).

3. Supreme Court of Alabama: In *Opinion of the Justices No. 269*, 384 So.2d 1051, this Court did provide guidelines as to what constituted a “public purpose.” Quoting *Clifford v. City of Cheyenne*, 487 P.2d 1325, 1329 (Wyo.1971), we stated that, generally speaking, a public purpose “has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, the general welfare of the community....”

“The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit.... The trend among the modern courts is to give the term “public purpose” a broad expansive definition....”

“[T]he question of whether or not an appropriation was for a public purpose [is] largely within the legislative domain rather than within the domain of the courts....”

“The Legislature has to a great extent the right to determine the question, and its determination is conclusive when it does not clearly appear to be wrong, assuming that we have a right to differ with them in their finding.... Taken on its face, it is our duty to

assume that the Legislature acted within constitutional limits and did not make a donation, when such construction is not inconsistent with the recitals of the act.”

The Alabama Supreme Court cited 56 *Am.Jur. Municipal Corporations* §579 in its opinion.

“The trend of modern courts is to give the term “public purpose” a broad expansive definition. There is no fixed static definition of “public purpose.” It is a concept which expands with the march of time. It changes with the changing conditions of our society. What today is not a public purpose may to future generations yet unborn be unquestionably a public purpose. “Public purpose” is a flexible phrase which expands to meet the needs of a complex society even though the need was unheard of when our State Constitution was adopted in 1842.” *Opinion of the Governor*, 112 R.I. 151, 308 A.2d 809 (1973).

C. LEGAL OPINION: It is my legal opinion that the answer to Legal Question One is in the affirmative. The Vestavia Hills Sports Hall of Fame is definitely a “public purpose” within in the meaning of Alabama law.

D. BASIS FOR LEGAL OPINION: I base my legal opinion upon the following reasons:

1. The City Council, with the enactment of Ordinance Number 2702 on April 10, 2017, found and determined that it would promote the health, safety and general welfare of the City to purchase the Gold’s Gym property and use it as a Community Civic Center.

2. The City Council, by the enactment of Ordinance Number 3118 on September 12, 2022, found and determined that it would promote the health, safety and general welfare of the City to allocate public funds for commemorative achievements.

3. The State of Alabama, by the contribution of \$50,000.00 to the City for the Vestavia Hills Sports Hall of Fame, apparently found and determined that commemorating athletic achievements by citizens would promote the health, safety and general welfare of the City of Vestavia Hills.

4. It is my legal opinion that the City Council’s actions regarding this matter meet the requirements of Alabama law insofar as determining that the Vestavia Hills Sports Hall of Fame is a public purpose.

5. Alabama law is well-settled that Courts will not overturn legislative decisions by governmental bodies absent proof of unfair dealing, fraud or bad faith (*City of Birmingham v. Wilkinson*, 516 So.2d 585 (1987)).

III. LEGAL ISSUE TWO

A. **LEGAL ISSUE TWO:** May the City legally pay public funds in the amount of \$129,812.67 to Method-1 Interiors for the creation, fabrication and installation of the Vestavia Hills Sports Hall of Fame in the interior entrance of the community Civic Center without advertising for competitive bids?

B. **LEGAL OPINION:** It is my legal opinion that the proposed agreement between the City and Method-1 Interiors is not subject to the Alabama Competitive Bid Law. Therefore, the answer to Legal Question Two is in the affirmative.

C. **BASIS FOR LEGAL OPINION:** Title 41-16-51(a)(3), *Code of Alabama, 1975*, provides as follows:

“§41-16-51. Exemptions—Void Contracts—Criminal Penalties.

(a) Competitive bids shall not be required for utility services, the rates for which are fixed by law, regulation, or ordinance, and the competitive bidding requirements of this article shall not apply to:

(3) Contracts for securing services of attorneys, physicians, architects, teachers, superintendents of construction, **artists** (*emphasis added*), appraisers, **engineers** (*emphasis added*), **consultants** (*emphasis added*), certified public accountants, public accountants, or other individuals possessing **a high degree of professional skill where the personality of the individual plays a decisive part** (*emphasis added*).”

IV. CONCLUSION

It is my legal opinion that the creation, fabrication and installation of the Vestavia Hills Sports of Hall of Fame to commemorate athletic achievements of its citizens is in fact a public purpose and that the work to create, fabricate and install it is exempt from the Alabama Competitive Bid Law by virtue of Title 41-16-51(a)(3), *Code of Alabama, 1975*.

Please call me if you have any questions about this matter.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

Attachment

cc: City Clerk Rebecca Leavings (by e-mail)



Vestavia Hills
Athletics Hall of Fame
FABRICATION PROPOSAL

01.27.2023

- **Athlete Wall** - A wall is to be built and installed in the existing space and will have a total of six panels with printed graphics that represent new inductees to the hall of fame. The panels will have the ability to be switched out over time. Edge lighting will span the entirety of the frame around the athlete panels. Dimensional letters will be mounted on the top of the frame.
- **LED Video Wall** - A large video wall will be mounted in the center of the hall of fame wall.
- **Artifact Display Cases** - On the other side of the walls on both ends of the HoF will be display cases for artifacts. The cases are to be internally lit and match the aesthetic of the HoF wall. Artifact labels are to be provided as well.
- **Delivery and Installation** - Final Field Measure and Installation of built components and graphics, including AIA Performance Bond and AIA Payment Bond

Total Cost for above Method-1 Scope: \$136,312.67 (Delivered and Installed)

Method-1 Pricing Includes:

- Field Measurement, Coordination and Verification
- Production Design, Engineering, Production Management
- Graphic Prepress and proofing
- Fabrication and Graphics Production
- Preview at Method-1 Facility (Birmingham, AL)
- Teardown and Packing for Delivery
- Delivery and Installation, Walkthrough, Punch, and Completion
- Video Assets for LED wall
- Graphic Design

Client Provided Items:

- *Artifacts for display case*

Does Not Include:

- *Applicable sales taxes*
- *Refer to the "Method-1 Provided" page in the rendering deck for detailed method-1 scope of work.*
- *Furniture and other decor not specifically listed in the Method-1 SoW. We can quote furniture as needed.*
- *Electrical, plumbing, paint, flooring or other required site work not specifically listed in the method-1 SoW.*



VESTAVIA HILLS SPORTS HALL OF FAME

CONCEPT RENDERINGS • 11.14.2022



VESTAVIA HILLS

HALL OF FAME



CASEY DUNN
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



TREVI HARGREE
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



GEORGE HATCHETT
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



CHRIS HAMMOND
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



FRAN BRAASCH
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



BUDDY ANDERSON
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



PETER BRAASCH
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



STEVE CAWDOSSH
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



SAMMY DUNN
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick





DAVID JORDAN
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



RYAN MALAR
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



BEANIE HETCHAM
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



ARCHIE
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



NUTT REYNOLDS
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick



JEANNE
 1989 - 2007
 1st Round, 1st Pick
 1st Round, 1st Pick

VESTAVIA HILLS

HALL OF FAME

CASEY DUNN
MAJOR LEAGUE BASEBALL
1990 - 2002

TREY HARDEE
100M SPRINT
BEIJING 2008

GEORGE HATCHETT
YOUNG BOYS' BASKETBALL
MARCH 1900 - 2022

**FRAN
BRAASCH**
RECHENBERG
VERLAG

Buddy Anderson
CLARK HOWARD
#14



PETER RAASCH
 1980-1981



DAVID JORDAN
UNIVERSITY OF
SOUTH ALABAMA



RYAN HALLA
MIDWESTERN
STATE U.



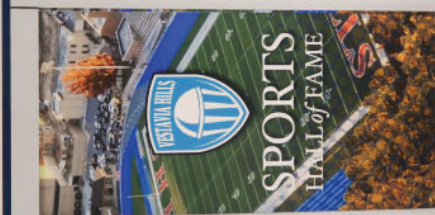
**BEATLE
BETTERMAN**
NEW SERIES
SEP 10



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method-1
REPRESENTS CONCEPTUAL AND SERVICING REPRESENTATIONS ONLY
BRANDED INTERIORS
PRESERVES THE RIGHT TO MAKE MODIFICATIONS TO THE DESIGN FOR STRUCTURAL SAFETY, OR ENGINEERING CONSIDERATION WITHOUT WRITTEN PERMISSION
EXPAND DISPLAYS METHOD-1

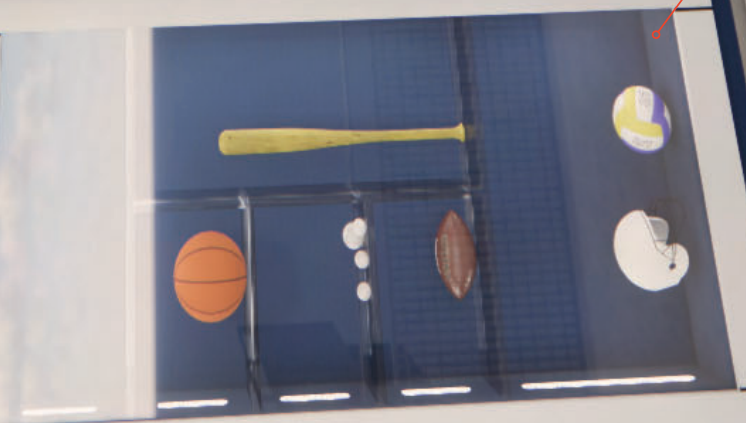


VESTAVIA HILLS



VESTAVIA HILLS

HALL OF FAME



DISPLAY CASE FOR ARTIFACTS

HALL OF FAME

EDGE LIGHTING

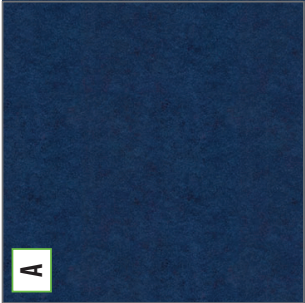
VESTAVIA HILLS



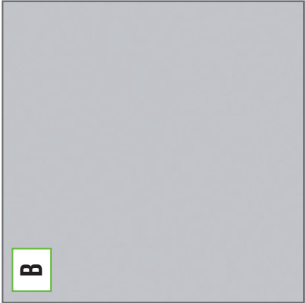
LED VIDEO WALL

LIGHTING TO ILLUMINATE GRAPHIC AREA

LAMINATES



BACKWALL
FORMICA RECLAIMED DENIM (9270)



FRAME & ATHLETE PANELS
FORMICA ZEN GREY (9243)



TABLE OF CONTENTS

Section 1	Preface
Section 2	Legal Opinion
Section 3	AIA Document A101-2017 Contract
Section 4	AIA Document A201-2017 General Conditions
Section 5	AIA Document A312-2010 Performance Bond
Section 6	AIA Document A312-2010 Payment Bond
Section 7	First Addendum to Construction Contract
Section 8	Checklist for Contract
Section 9	Contract Time Table
Section 10	Reserved

PREFACE

TO: City Manager Jeffrey D. Downes

FROM: City Attorney Patrick H. Boone

DATE: August 9, 2018

RE: Public Works Construction

This book contains AIA contract documents modified to the extent necessary for the City of Vestavia Hills, Alabama to use for any public works construction project.

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720
TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

E-Mail: patrickboone@bellsouth.net

August 9, 2018

By Hand Delivery

City Manager Jeff Downes
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Form Construction Contract

Dear Mr. Downes:

On July 26, 2018, you sent to me via electronic mail certain AIA contract documents with a request that I review and modify them so that the City will have a form Construction Contract to use for implementation of the Community Spaces Plan. The purpose of this legal opinion and First Addendum to Construction Contract is to comply with your request.

I. FACTS

The AIA contract documents that you furnished to me were:

- A. AIA Document A101-2017 Contract.
- B. AIA Document A201-2017 General Conditions.
- C. AIA Document G701-2017 Change Order.
- D. AIA Document G702-1992 Application and Certificate for Payment.
- E. AIA Document G703-1992 Continuation Sheet.
- F. AIA Document G704-2017 Certificate of Substantial Completion.
- G. AIA Document G705-2001 List of Subcontractors.
- H. AIA Document G706-1994 Contractors Affidavit of Payment of Debts and Claims.

- I. AIA Document G706-A-1994 Contractor's Affidavit of Release of Liens.
- J. AIA Document G707-1994 Consent of Surety to Final Payment.
- K. AIA Document G707-A-1994 Consent of Surety to Reduction In or Partial Release of Retainage.
- L. AIA Document G709-2001 Work Changes Proposal Request.
- M. AIA Document G710-2017 Architect's Supplemental Instructions.
- N. AIA Document G714-2017 Construction Change Directive.
- O. AIA Document G716-2004 Request for Information (RFI).

You did not provide me with copies of the following AIA documents, which I obtained from another source:

- P. AIA Document A312-2010 Performance Bond.
- Q. AIA Document A312-2010 Payment Bond.

II. ALABAMA LAW

While municipalities in Alabama have the legal authority to enter into a construction contract with a privately owned entity, they are subject to many restrictions that do not apply to private entities. Before rendering a legal opinion on the AIA contract documents, it is first necessary to review some Alabama laws that municipalities must comply with when entering into a construction contract.

The Alabama Public Works Law applies to municipalities and Title 39-2-1(1), *Code of Alabama, 1975*, defines a municipality as an "awarding authority."

A. PUBLIC WORKS: The Alabama Public Works Law regarding public works construction projects provides, among other things, that a public works project is the expenditure of public funds on real estate owned by a municipality or on a structure attached to that real estate. Title 39-2-1(6), *Code of Alabama, 1975*, as follows:

"(6) PUBLIC WORKS.--The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise."

MY RECOMMENDATION: I recommend that the following language be 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: Alabama law, at Title 39-1-1(a), *Code of Alabama, 1975*, reads as follows:

Alabama law, at Title 39-1-1 (a), *Code of Alabama, 1975*, reads as follows:

"(a) Any person entering into a contract with an awarding authority in this state for the prosecution of any public works shall, before commencing the work, execute a performance bond, with penalty equal to 100 percent of the amount of the contract price. In addition, another bond, payable to the awarding authority letting the contract, shall be executed in an amount not less than 50 percent of the contract price, with the obligation that the contractor or contractors shall promptly make payments to all persons supplying labor, materials, or supplies for or in the prosecution of the work provided in the, contract and for the, payment of reasonable attorneys' fees incurred by successful claimants or plaintiffs in civil actions on the bond."

MY RECOMMENDATION: Alabama law requires the Contractor to execute a Performance Bond and Payment Bond to a public works project. Therefore, I recommend that the following language be added to Section 11.1.2 of the General Conditions:

“PERFORMANCE BOND AND PAYMENT BOND

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 (\$_____).

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:** Title 34-2-30, *Code of Alabama, 1975*, defines the terms "architect" and "building" as follows:

"(1) ARCHITECT.—An individual who is legally qualified to practice architecture.

(2) BUILDING.—A structure consisting of foundation, walls, or supports and roof, with or without related components, systems, or other parts comprising a completed building ready for occupancy."

Title 34-2-32(c), *Code of Alabama, 1975*, provides as follows:

"(c) The services of a registered architect shall be required on all buildings except those hereinabove exempted and no official of this state or of any city, town, or county herein charged with the enforcement of laws, ordinances, or regulations relating to the construction or alteration of buildings, shall accept or approve any plans or specifications that are not so prepared."

MY RECOMMENDATION: I recommend that the following language be added to Section 2.3.2 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. **ENGINEERING:** Title 34-11-10, *Code of Alabama, 1975*, provides as follows:

"It shall be unlawful for the state or any of its departments, boards or agencies or any county, municipality or political subdivision or any department, board or agency of any county, municipality or political subdivision to engage in the construction of any public work involving the practice of engineering unless the engineering drawings, plans, specifications and estimates have been prepared by and the construction executed under the direct supervision of a professional engineer; provided, that nothing in this chapter shall be held to apply to any public work wherein the expenditure for the complete project of which the work is a part does not exceed \$20,000.00."

MY RECOMMENDATION: I recommend that the following language be 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. LICENSED GENERAL CONTRACTOR: Alabama law at Title 34-8-1(a), *Code of Alabama, 1975*, requires that a public works project be performed by a licensed general contractor and defines a "general contractor" to be:

"One who, for a fixed price, commission, fee, or wage undertakes to construct or superintend or engage in the construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building, highway, sewer, structure, site work, grading, paving or project or any improvement in the State of Alabama where the cost of the undertaking is fifty thousand dollars (\$50,000.00) or more, shall be deemed and held to have engaged in the business of general contracting in the State of Alabama."

MY RECOMMENDATION: I recommend that the following language be 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: Section 11.1.1 of the General Conditions requires the Contractor to purchase and maintain insurance, but does not establish the required limits of coverages.

MY RECOMMENDATION: I recommend that the following language be 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 Owner.

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 INSURED: Neither the Contract nor the General Conditions require that the Contractor name the Owner and its public officials and employees as named insureds on the policies of insurance purchased and maintained by the Contractor. Therefore, I recommend that Section 11.1.5 be added to the General Conditions, which shall read in words and figures as follows:

“SECTION 11.1.5 ADDITIONAL INSURED: 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: Municipalities in Alabama are not legally required to pay sales taxes. Title 40-23-4(a), *Code of Alabama, 1975*, reads in pertinent part as follows:

“§40-23-4. Exemptions; Certain Sales.

(a) There are exempted from the provisions of this division and from the computation of the amount of the tax levied, assessed, or payable under this division the following:

(11) The gross proceeds of sales of tangible personal property to the State of Alabama, to the counties within the state and to incorporated municipalities in the State of Alabama.

(15) The gross proceeds of the sale or sales of tangible personal property to county and city school boards, independent school boards, and all educational institutions and agencies of the State of Alabama, the counties within the state, or any incorporated municipalities in the State of Alabama.”

On the other hand, private entities engaged in the construction business are required to pay sales taxes on materials purchased and used to build a building.

A municipality and a contractor may avoid the payment of such sales taxes by using the process outlined in Act Number 2013-205 now codified at Title 40-9-14.1, *Code of Alabama, 1975*.

MY RECOMMENDATION: I recommend that Section 3.6 on page 14 of the General Conditions be 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: It is a well-established rule of law that a materialmen’s lien will not attach to the public property owned by the state, county or a municipal corporation (*Scruggs and Echols v. Decatur*, 155 Ala. 616 (1908); and *Nunnally v. Dorand*, 110 Ala. 539). Under the public works bonding statute, a contractor who is to perform work upon the property of a state, county or municipal corporation must first execute a performance bond and payment bond to insure the satisfaction of materialmen’s claims (Title 39-1-1, *Code of Alabama, 1975*). The performance bond and payment bond serve as a substitute for the unavailable materialmen’s lien (*Headley v. Housing Authority of Prattville, Alabama*, 347 So.2d 532 (1977)).

Any person that has furnished labor, materials or supplies for or in the prosecution of a public work and payment has not been made may institute a civil action upon the payment bond and have their rights and claims adjudicated in a civil action and judgment entered thereon all in accordance with the process set forth in Title 39-1-1(b), *Code of Alabama, 1975*.

MY RECOMMENDATION: I recommend that Section 2.1.2 on page 11 of the General Conditions be 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: An independent contractor is one who undertakes to do work for another according to its own methods and means, not being subject to the control of the other person except as to the result to be accomplished.

MY RECOMMENDATION: I recommend that the following language be added as Section 3.3.4 on page 13 of the General Conditions,

“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:

1. **Statutory Law Regarding Change Orders:** Change Orders are not provided for in (a) the Alabama Competitive Bid Law set forth in Title 41-16-50, et seq., *Code of Alabama, 1975*; or (b) the Public Works Law set forth in Title 39-2-1, *Code of Alabama, 1975*.

2. **Attorney General for the State of Alabama:** Although change orders are not provided in the Competitive Bid Law or the Public Works Law, they have been allowed pursuant to guidelines articulated by the office of the Attorney General in the interpretation of the legislative intent in formulating the Competitive Bid Law.

**Opinion, Dated June 15, 1979,
to State Building Commission**

On June 15, 1979, the Attorney General for the State of Alabama issued a written legal opinion to the State Building Commission listing guidelines, which provide criteria for approving change orders to existing public works contracts. That opinion reads in pertinent part as follows:

"Set out as follows are the types of change orders which will be allowed:

- (1) minor changes for a total monetary value less than required for competitive bidding;
- (2) changes for matters relatively minor and incidental to the original contract necessitated by unforeseeable circumstances arising during the course of the work;
- (3) emergencies arising during the course of the work on the contract;
- (4) changes or alternates provided for in the original bidding where there is no difference in price of the change order from the original best bid on the alternate;
- (5) changes of relatively minor items not contemplated when the plans and specifications were prepared and the project was bid which are in the public interest and which do not exceed 10% of contract price;

There should be attached to each change order a signed statement from architect containing the following:

- (1) a statement of what the change order covers and who instituted the change order and why is it necessary or desired;
- (2) there must be a statement stating the reasons for using the change order method rather than competitive bids;
- (3) there must be a statement that all prices have been reviewed and found reasonable, fair, and equitable and recommending approval of same;
- (4) the local owner shall either endorse the architect's statement and recommendations or submit a separate statement covering the foregoing items.

The amount of changes approved shall not exceed 10% of the contract price whether made through negotiations with the low bidder or by change order. This limit applies to each individual negotiation and each change order and to the cumulative total for each project. This means that the total of negotiations and/or change orders shall not exceed 10% of the contract price for each project.

It should be pointed out that the above criteria for negotiations with a low bidder and change orders are guidelines only and each factual situation must be decided on the facts and merit of each case."

3. **Other Attorney General Opinions:** I want to point out that the Attorney General has issued written legal opinions stating that under extraordinary circumstances a change order exceeding ten percent (10%) may be added to the original contract for the construction of a public works contract. My research found eleven of those opinions described below.

<u>OPINION NUMBER</u>	<u>DATE</u>
(a) 81-00105	November 26, 1980
(b) 81-00463	July 22, 1981
(c) 81-00580	September 15, 1981
(d) 87-00153	April 29, 1987
(e) 87-00197	May 27, 1987
(f) 91-00279	May 29, 1991
(g) 92-00049	November 15, 1991
(h) 93-00105	January 8, 1993
(i) 2000-098	February 28, 2000
(j) 2002-182	March 22, 2002
(k) 2011-078	July 20, 2011

4. **Expenditure of Public Funds:**

- (a) Everything that a governmental body does must be done in the **best interest of the public.**
- (b) Government officials must act in **good faith** in executing the requirements of law.

5. **Supreme Court of Alabama:** Cases decided by the Alabama Supreme Court hold as follows:

- (a) *White v. McDaniel Ford Tractor Company, Inc.*, 287 Ala. 77 and 248 So.2d 121 (1971).
 - (i) Public officials exercise their **discretion** in competitive bid matters.
 - (ii) Public officials must exercise **good faith**.
- (b) *Mobile Dodge, Inc. v. Mobile County*, 442 So.2d 56 (1983):
 - (i) Public officials must act **reasonably**.
 - (ii) Public officials must act **rationaly**.
 - (iii) Public officials must exercise **good faith**.
 - (iv) Public officials must have **proper motives**.
 - (v) Public officials cannot **abuse their discretion**.

6. **Alabama Building Commission Administrative Code:** Chapter 7 Section H 1 of the *State of Alabama Building Commission Administrative Code* provides:

“Determination of legality of change orders rests with the awarding authority and its legal advisor.”

It goes on to say that the June 15, 1979 opinion issued by the office of the State Attorney General sets forth the criteria to determine whether or not a change order is legally justified. That section also requires that each proposed change justification be confirmed in writing by the legal advisor to the awarding authority.

MY RECOMMENDATION: I recommend that the following language be 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:** On June 11, 2018, the City Council of the City of Vestavia Hills, Alabama enacted the following ordinances:

1. **Ordinance Number 2769:** An ordinance rescinding Ordinance Number 1782 and amending Chapter 5.5; Article II, entitled "Erosions and Sediment Control" of the Vestavia Hills Code of Ordinances.

2. **Ordinance Number 2770:** An ordinance establishing methods for controlling the introduction of pollutants into municipal separate storm sewer system in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) Permit Process.

3. **Ordinance Number 2771:** An ordinance establishing post-construction best management practices for permanent storm water control structures.

MY RECOMMENDATION: I recommend that the following section 3.7.4 be 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:** It is my legal opinion that municipalities in Alabama may not legally spend public funds to indemnify third parties. I base my legal opinion upon the following Alabama legal authorities.

1. **Constitution of Alabama of 1901:** Section 94, as amended by Amendments 112 and 558, of the *Constitution of Alabama* provides as follows:

"The Legislature shall not have power to authorize any county, city, town or other subdivision of this state to lend its credit or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever."

2. **Municipalities in Alabama May Spend Public Funds Only for Public Purposes:** Municipalities in Alabama may spend public funds only for public purposes. The Supreme Court of Alabama has interpreted the language of Sections 93 and 94 of the *Constitution of Alabama* to allow appropriations of public funds when the appropriation is used for public purposes. *Alabama Constitution* amend. 93; *Alabama Constitution* amend. 94; *Slawson v. Alabama Forestry Comm'n*, 631 So.2d 953 (Ala.1994). *Opinion of the Justices No. 269*, 384 So.2d 1051 (1980); *Stone v. State*, 251 Ala. 240 (1948).

3. **Violations of Established Law:** In my opinion, it would be a violation of the following laws for a municipality to indemnify a third party for actions, costs, expenses, damages and liabilities:

- (a) Article IV Section 94(a) of the *Constitution of Alabama*; and
- (b) would waive the statutory maximum limits of liability set forth in Title 11-93-2, *Code of Alabama, 1975*; and
- (c) would waive the discretionary function immunity for its public employees established by the holdings in *Woods v. Wilson*, 539 So.2d 224 and *Hilliard v. Huntsville*, 585 So.2d 889; and
- (d) violate the joint liability statute set forth at Title 11-47-191(b), *Code of Alabama, 1975*; and
- (e) would prejudice the rights of the City general comprehensive liability insurance carrier and jeopardize coverage under the policy.

MY RECOMMENDATION: I recommend that Sections 10.3.3 and 10.3.6 on page 30 of the General Conditions be deleted in their entirety.

N. **IMMIGRATION:** Title 31-13-9(k), *Code of Alabama, 1975*, reads as follows:

“(k) All contracts or agreements to which the state, a political subdivision, or state-funded entity are a party shall include the following clause: ‘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.’”

MY RECOMMENDATION: I recommend that the following section 16.1 be 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: A municipality in Alabama is defined as a governmental entity by Title 41-16-5(a)(3), *Code of Alabama, 1975*. That statute further provides as follows:

“(b) Subject to subsection (c), a governmental entity may not enter into a contract governed by Title 39 or Chapter 16, Title 41, Code of Alabama 1975, with a business entity unless the contract includes a representation that the business entity is not currently engaged in, and an agreement that the business entity 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) (1) This section does not apply if a business fails to meet the requirements of subsection (b) but offers to provide the goods or services for at least 20 percent less than the lowest certifying business entity.

(2) This section does not apply to contracts with a total potential value of less than fifteen thousand dollars (\$15,000).

(d) Nothing in this section requires a business entity or individual to do business with any other particular business entity or individual to do business with any other particular business entity or individual in order to enter into a contract with a governmental entity.”

MY RECOMMENDATION: I recommend that the following section 16.2 be 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. **MISCELLANEOUS:** I recommend that the following Article 18 entitled "Miscellaneous" be 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.

Q. CONTRACT DOCUMENTS: The contract documents described in Article 1 of the Contract should 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.

MY RECOMMENDATION: I recommend that the following language be 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.”

R. RATIFY CONTRACT AND GENERAL CONDITIONS: In my opinion, the Owner and Contractor should ratify the terms, provisions, limitations and conditions that were not modified, added or deleted by this First Addendum.

MY RECOMMENDATION: I recommend that Article 17 should be 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.”

Please call me if you have any questions regarding any of the matters or recommendations set forth in this legal opinion.

Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp
cc:



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)

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

The parties should complete A101™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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.)

Init.

[] 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
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- .6 Specifications

Section	Title	Date	Pages
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- .7 Addenda, if any:

Number	Date	Pages
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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.)

Init.

[] 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
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[] Supplementary and other Conditions of the Contract:

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

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

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

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

Init.



Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

THE OWNER:

(Name, legal status and address)

THE ARCHITECT:

(Name, legal status and address)

TABLE OF ARTICLES

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

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.

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

Init.

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

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

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and
Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,
9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance

9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of

1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration

15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5

Commencement of the Work, Definition of

8.1.2

Communications

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

**CONSTRUCTION BY OWNER OR BY
SEPARATE CONTRACTORS**

1.1.4, 6

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

**CONTRACT, TERMINATION OR
SUSPENSION OF THE**

5.4.1.1, 5.4.2, 11.5, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees

2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

2.2.2, 9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.3.6, 3.11

Copyrights

1.5, **3.17**

Correction of Work

2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.4

Costs

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay

6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

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

Delays and Extensions of Time

3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, **7.4, 8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

Digital Data Use and Transmission

1.7

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2

Emergencies

10.4, 14.1.1.2, **15.1.5**

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

Final Completion and Final Payment

4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials and Substances

10.2.4, **10.3**

Identification of Subcontractors and Suppliers

5.2.1

Indemnification

3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,

11

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
15.1.2, 15.1.3, 15.1.5

Materials, Hazardous

10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1

Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.3.2.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,

7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

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

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

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

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION

OF

10

Init.

Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, 3.12, 4.2.7
Progress and Completion
4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4
Progress Payments
9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4
Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, 11.2
Proposal Requirements
1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8,
15.4
Rejection of Work
4.2.6, 12.2.1
Releases and Waivers of Liens
9.3.1, 9.10.2
Representations
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
**Review of Contract Documents and Field
Conditions by Contractor**
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and
Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and
Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
12.2.4, 13.3, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, 3.12, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, 3.12, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
15.1.2, 15.4.1.1
Stopping the Work
2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4,
9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3,
9.8, 9.9.1, 9.10.2, 9.10.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, 11.3
Substances, Hazardous
10.3
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,
12.2, 15.1.2

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,

7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of

9.8.5, 9.10.2, 9.10.3

Surveys

1.1.7, 2.3.4

Suspension by the Owner for Convenience

14.3

Suspension of the Work

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor

14.1, 15.1.7

Termination by the Owner for Cause

5.4.1.1, 14.2, 15.1.7

Termination by the Owner for Convenience

14.4

Termination of the Architect

2.3.3

Termination of the Contractor Employment

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, 15.1.7

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, 11.3

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

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

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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.

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

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

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

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

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

§ 11.2 Owner's Insurance

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

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

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

§ 11.3 Waivers of Subrogation

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

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

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

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

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

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

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

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

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

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

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

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

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

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

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

§ 15.3 Mediation

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

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

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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

**AIA**[®]**Document A312™ – 2010****Performance Bond****CONTRACTOR:***(Name, legal status and address)***SURETY:***(Name, legal status and principal place of business)***OWNER:***(Name, legal status and address)***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.

Additions and Deletions Report for **AIA[®] Document A312[™] – 2010**

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 10:17:28 on 02/19/2013.

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:

(Name, legal status and address)

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:

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

Init.

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User Notes:

(1702376038)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 16 Definitions

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

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

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

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

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

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

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

§ 18 Modifications to this bond are as follows:

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

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

SURETY

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

Additions and Deletions Report for **AIA® Document A312™ – 2010**

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 10:14:23 on 02/19/2013.

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 10:14:23 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, Payment 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)

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 _____, 2018.

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 (\$_____).

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 INSURED: 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 INSURED: 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. **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.

Q. 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.”

R. 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 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 _____, 2018.

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 _____, 2018.

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 _____ whose name as
_____ of
_____, 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 _____, 2018.

Notary Public

My Commission Expires:

SEAL

CHECKLIST

TO: City Manager Jeffrey D. Downes

FROM: City Attorney Patrick H. Boone

DATE: August 9, 2018

RE: Checklist

The AIA Document A101-2017 being the Standard Form of Agreement Between Owner and Contractor ("contract") consists of eight (8) pages. Certain information must be inserted in some of the sections before the contract can be put in the Bid Package. Some of those important items are as follows:

<u>ARTICLE</u>	<u>PAGE</u>	<u>DESCRIPTION</u>
Section 3.1	2	What is the date of the commencement of work?
Section 3.2	2	What is the contract time?
Section 3.3.1	2	What is the date of substantial completion of the work?
Section 4.5	3	What is the amount of liquidated damages, if any?
Section 5.1.3	4	What is the date for application of payment each month?
Section 5.1.7.1	4	What percentage will the retainage be?
Section 5.1.8	5	Will the City be required to make a payment to the Contractor for a delay not caused by the Contractor; and if so, how much?
Section 5.3	5	What is the percentage for late payments, if any?
Section 6.2	6	What binding dispute resolution does the City prefer?
Section 7.1.1	6	If the contract is terminated for the Owner's convenience, what amount, if any, will the Owner be required to pay to the Contractor?
Section 8.2	6	Will the Owner's representative be anyone other than Jeff Downes?

CONTRACT TIME TABLE

TO: City Manager Jeffrey D. Downes

FROM: City Attorney Patrick H. Boone

DATE: August 9, 2018

RE: Contract Time Table

Some important deadlines to consider are set forth below.

1. **AWARD OF CONTRACT BY THE CITY:** The award of the contract shall be made to the Proposer within thirty (30) days after the opening of the Proposals as required by Title 39-2-5, *Code of Alabama, 1975*.

2. **CONTRACTOR SIGNING THE CONTRACT:** The Contractor shall execute and deliver the Construction Contract and deliver the Performance Bond, Work and Material Bond, and evidence of insurance within fifteen (15) days after the City has presented the contract to the Contractor for signature as required by Title 39-2-8, *Code of Alabama, 1975*.

3. **APPROVAL OF BONDS AND INSURANCE COVERAGES:** The City shall approve the Contractor's bonds and evidence of insurance and sign the Construction Contract within twenty (20) days after the Contractor presents the same to the City as required by Title 39-2-9, *Code of Alabama, 1975*.

4. **PROCEED ORDER:** A Proceed Order shall be issued by the City to the Contractor within fifteen (15) days after the contract has been signed by both parties as required by Title 39-2-10, *Code of Alabama, 1975*.

5. **COMMENCEMENT AND SUBSTANTIAL COMPLETION OF WORK:** The Contractor shall commence with the work on the date set forth in Article 3.1 of the contract and achieve substantial completion by the deadline set forth in Article 3.3 of the contract.

ORDINANCE NUMBER 3149

**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 VESTAVIA HILLS R-4 TO VESTAVIA HILLS
B-2**

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 Vestavia Hills R-4 (medium density residential district) to Vestavia Hills B-2 (general business district):

3951 Wall Street
Jeff Lett, Owner(s)

More particularly described as follows:

A part of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 15, Township 18 South, Range 2 West described as follows: Begin at the SW corner of the SE $\frac{1}{4}$ and run North 495 feet; thence east 296 feet for a point of beginning; thence run North 165 feet; thence east 100 feet; thence south 165 feet; thence west 100 feet to the point of beginning.

BE IT FURTHER ORDAINED that said rezoning is conditioned upon all materials presented including, but no limited to, site plans, renderings, business plans and all other ancillary documents

APPROVED and ADOPTED this the 27th day of February, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

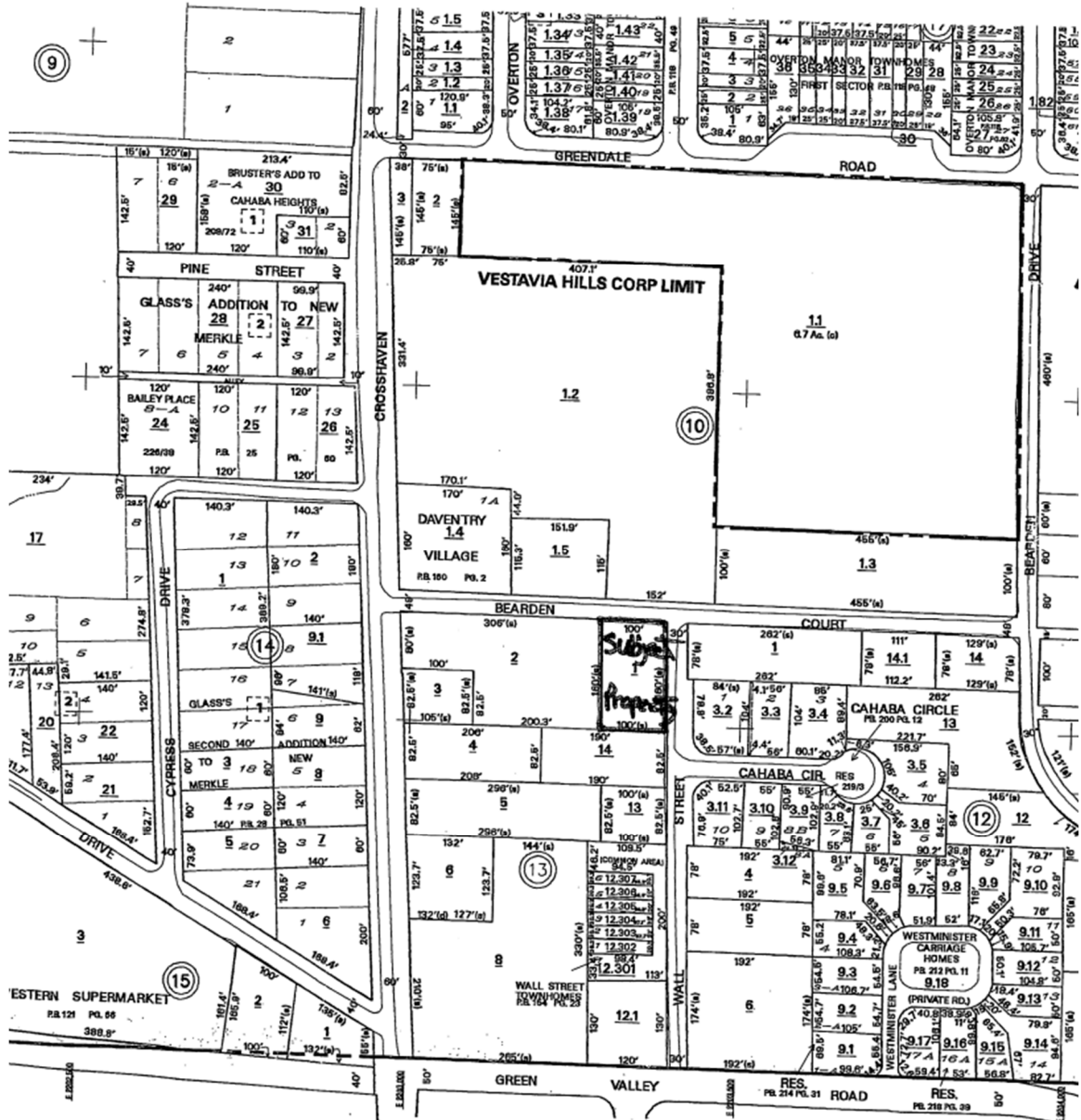
Rebecca Leavings
City Clerk

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 # 3149 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 27th day of February, 2023 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 _____, 2023.

Rebecca Leavings
City Clerk





City of Vestavia Hills

Planning and Zoning Commission Review and Recommendation



Case Number: RZ-22-10

Representative: Frank Skidmore

Owner Name: Jeff Lett

Rep. Address: 3524 Brookwood Road, Mountain Brook Alabama 35223

Owner Address: 4025 North Cahaba Drive, Vestavia, Alabama 35243

Project Address: 3951 Wall Street

Legal Description: Vacant Lot

Parcel ID Number:

Current Zoning: R4

Requested Zoning: B2

Intended Purpose: Building an Indoor Swimming Pool

MOTION Mrs. Barnes made a motion to recommend Rezoning for 3951 Wall St. from Vestavia Hills R-4 to Vestavia Hills B-2 conditioned on all materials presented; including site plans, renderings, business plans, and all other ancillary documents. Second was by Mr. Sykes. Motion was carried on a roll call; vote as follows:

Mr. Farrell – yes

Mr. Sykes – yes

Ms. Barnes – yes

Mr. Larson – no

P&Z

Recommendation: Mr. Romeo – yes

Mr. Weaver– yes

Mr. Honeycutt – yes

Mr. Maloof– yes

Mr. Vercher– yes

Motion carried.

Date of P&Z Meeting: January 12, 2023

Authorized by:

Vestavia Hills Planning and Zoning Commission, Michael Vercher, Chair

Issued by:

Conrad Garrison, City Planner

12/22/22, 9:49 AM

about:blank

Rezoning Application

RZ-22-10

Submitted On: Dec 8, 2022

Applicant

Frank Skidmore

205-901-7288

@ fspec001@gmail.com

Primary Location

3951 WALL ST
VESTAVIA HILLS, AL 35243

Property Information

Subject Property Address

3951 Wall Street

Legal Description

Vacant Lot

Existing Parking Spaces

0

Submission Date

12/08/2022

Tax Parcel ID Number

--

Proposed Parking Spaces

20

Type of Project

New Commercial Development

Action Requested:

From Existing Zoning Classification

R4

For the Intended Purpose of:

Building an Indoor Swimming Pool

Acreage of Subject Property

0.4 acres

To Requested Zoning Classification

B2

Acreage of Property to be Disturbed

0.4 acres

Setbacks

Front

30

Side

5

Lot Coverage Percentage

24

Back

30

Open Space

12678

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).

true

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.

Property Owner Name

Jeff Lett

about:blank

Page 132 of 156

Company Name

--

Owner Address City State Zip

4025 North Cahaba Drive, Vestavia, Alabama 35243

Owner's Phone Number

2053810208

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

Email Address of Owner

jefflett28@gmail.com

Owner Representative/Responsible Party

Frank Skidmore

Company Name

--

Contact Email of Responsible Party

fspec001@gmail.com

Mailing Address of Responsible Party

3524 Brookwood Road, Mountain Brook Alabama 35223

Phone No. of Responsible Party

2059017288

Email Address of Responsible Party

fspec001@gmail.com

Project Engineer Information (if applicable)

Name

--

Company

--

Mailing Address

--

Phone Number

--

Email

--

Kiwi Swim School, LLC
3951 Wall Street Site Plan

Summary of Document: We are requesting a site rezoning for 3951 Wall Street from residential to commercial. A site plan is required for submission of a rezoning request. On this page, we have detailed a brief description of the site plan.

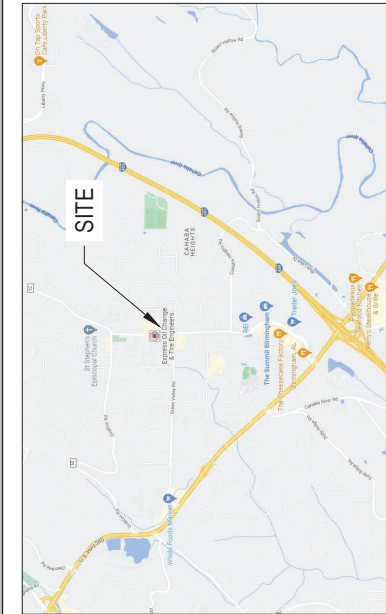
Description of Site Plan: A site plan was prepared by Bryan Pressnell, Forty 4 Engineering Design. A building of principle length 95 feet and principal width 41 feet is included on the lot with appropriate setbacks. A small “bump-out” area (7x15 feet) also maintains appropriate setbacks. The footprint of the building is 4000 square feet. Twenty parking spaces are included on the site. Behind the building, an area for rolling trash containers is included. The nature of the business does not involve substantial generation of trash and a dumpster will not be required. An accessory structure (shed) will securely keep pool chemicals and provide additional lot storage capacity. A separate landscaping plan is also included.

We are verbally instructed to submit online; we include a checklist of items included in this document below:

Below is a checklist of all information needed in order to process your request. This information must be supplied in its entirety or the item will not be properly filed and will (a) not be accepted by the Office; or (b) not be presented to the Commission. Acceptance by the Clerk does not constitute acceptance of complete and proper filing. **Please submit this checklist with your application.**

Applicant must submit all documentation designed by an “*”. The remaining information is supplied by staff.

*	☒	\$100 Application Fee
*	☒	Application (original) completed with owner’s signature notarized and representing agent designated (if applicable)
*	☒	One (1) vicinity sketch
*	☒	Development plan and/or site plan for intended use of property if subsequent development is intended
*	☐	Proposed Tree Save plan, if applicable
*	☒	Proposed landscaping plan, if applicable
*	☐	One (1) electronic copy (.pdf format) of all materials burned on CD or thumb drive

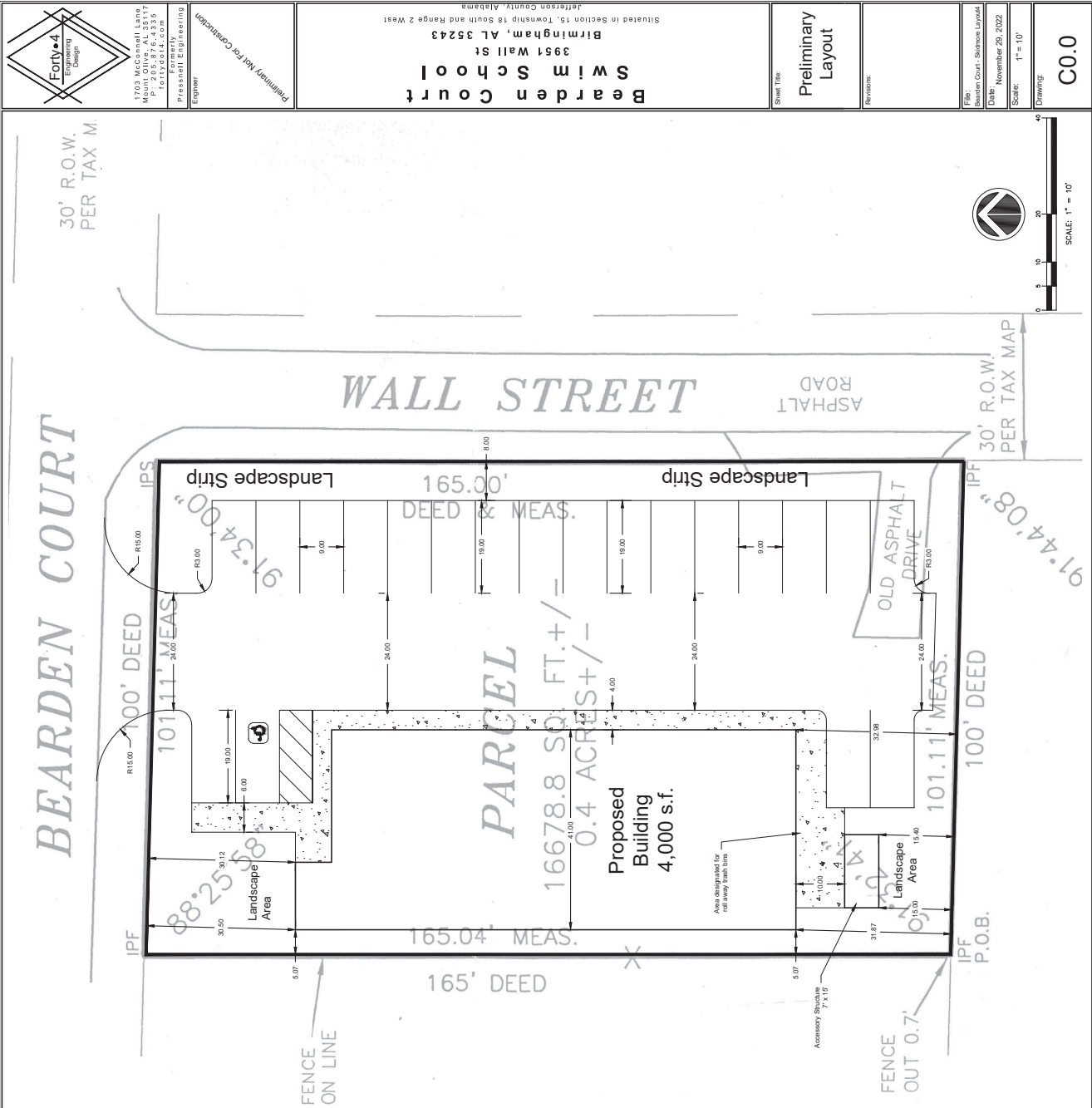


Vicinity Map
n.t.s.

Table 6.4 B-2 District Area and Dimensional Regulations	
Min. Yard Setbacks	
Front	30 ft.
Rear	30 ft.
Side	0-10 ft. see 6.4.2.1
Max. Building Height	45 ft or 4 stories, whichever is less

296' DEED
NOT TO SCALE

DEED
SCALE



Forty•4
Engineering
Design

1703 McCannell Lane
Birmingham, AL 35243
P: 205.876.4335
F: 205.876.4336
forty4eng.com

Prasanth Engineering
Engineer

Bearden Court Swim School
3951 Wall St
Birmingham, AL 35243

Situated in Section 15, Township 18 South and Range 2 West
Jefferson County, Alabama

Sheet Title
**Preliminary
Layout**

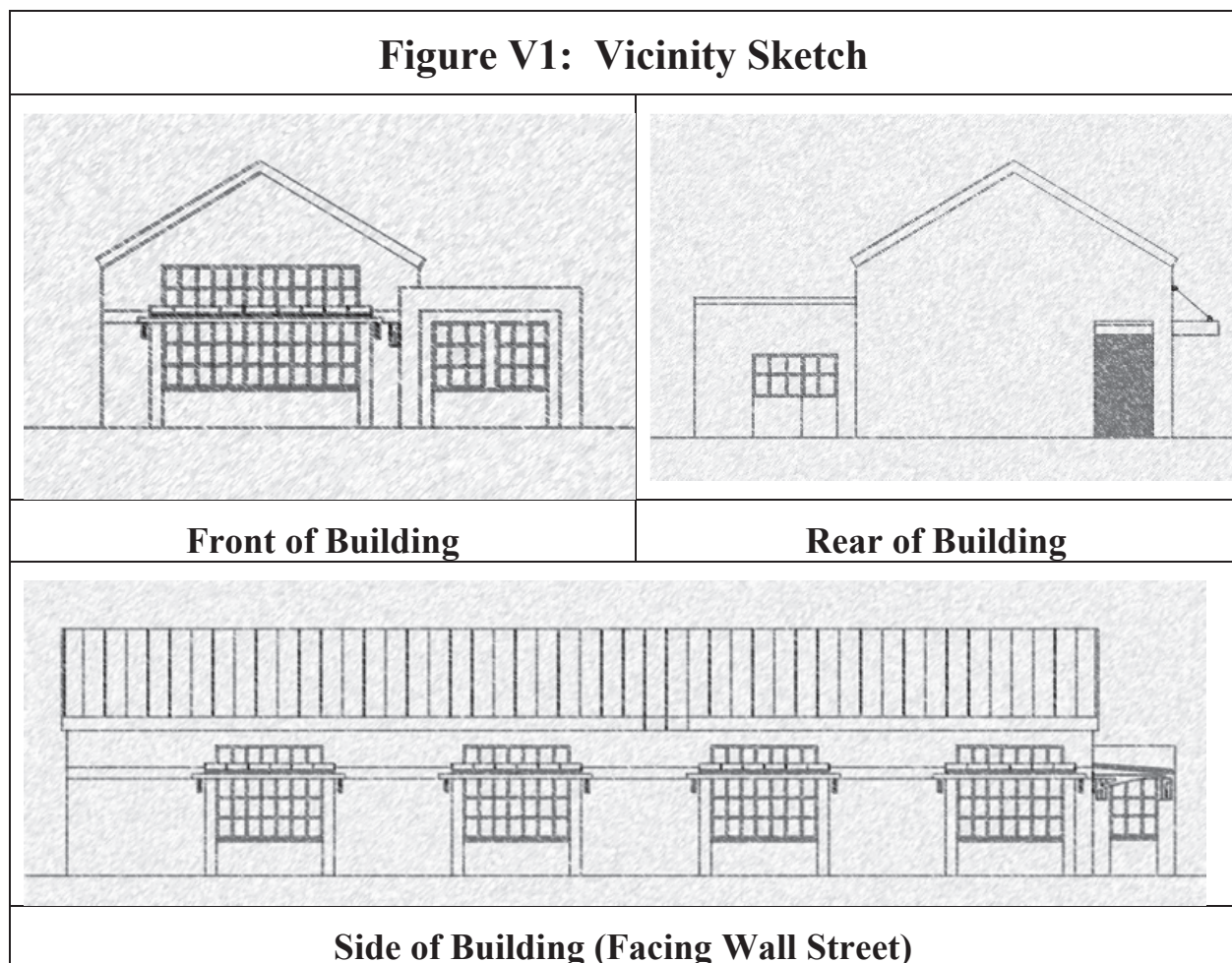
Revisions:

File:	Bearden Court - Bidrow Layout
Date:	November 29, 2022
Scale:	1" = 10'
Drawing:	C0.0

Kiwi Swim School, LLC
3951 Wall Street Vicinity Sketch

Summary of Document: A vicinity sketch is required for submission for a rezoning, and is provided.

Description Document: We plan to construct a commercial building that will add value to the community. Specifically, we are planning to use architectural principles to provide an esthetically positive addition to Bearden Road. At present, a pressed concrete building is anticipated. Figure V1 presents an initial sketch. An initial CAD/architectural file has been developed sufficient to assist in initial engineering planning (ie with Bryan Pressnell) and to allow interactions with pool contracting companies. A professional architecture company is being engaged to develop a more detailed vicinity sketch in the near future.



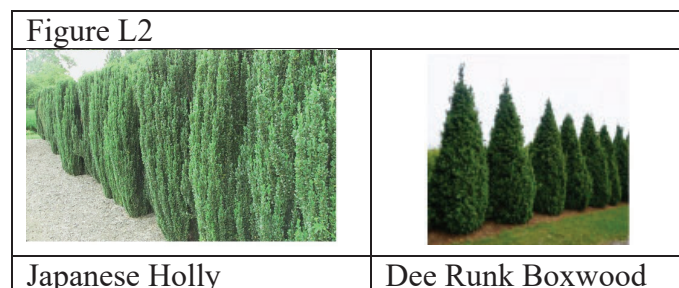
Kiwi Swim School, LLC
3951 Wall Street Tree Save and Landscaping Plan

Summary of Regulation: Vestavia has municipal codes to preserve trees in the community. According to city code, as part of any request for a land disturbance permit for a new subdivision with a minimum of five (5) lots, the applicant shall include, as a part of the application, a tree save plan that will preserve as many trees in the development as practical (Tree Permit 9.6.5, subsection 2). Additionally, code states any person wishing to remove, relocate, destroy, or otherwise damage a Protected Tree shall, under the provisions of this subsection, make written application to the DRB, which application shall include a landscape plan as provided before in said application or other information that adequately explains the request (Tree Permit 9.6.5, subsection 1). Kiwi Swim School, LLC, interprets these regulations to indicate that a Landscaping Plan is required. In this plan, we will cover:

- 1) Landscaping plans for 3951 Wall Street, and
- 2) Our plans for trees on the site, including plantings to mitigate any removed trees

Trees and Foliage On Site: Six living trees with Tree Caliper greater than 6 inches have been located on the lot, of the following caliper (in inches): 19", 15", 9.5", 15", 33", 36". Two crepe myrtle plants with dimensions of trunks less than the 6 inch caliper are also present on the lot. A dead tree is also located on the lot. The existing trees and foliage will be removed.

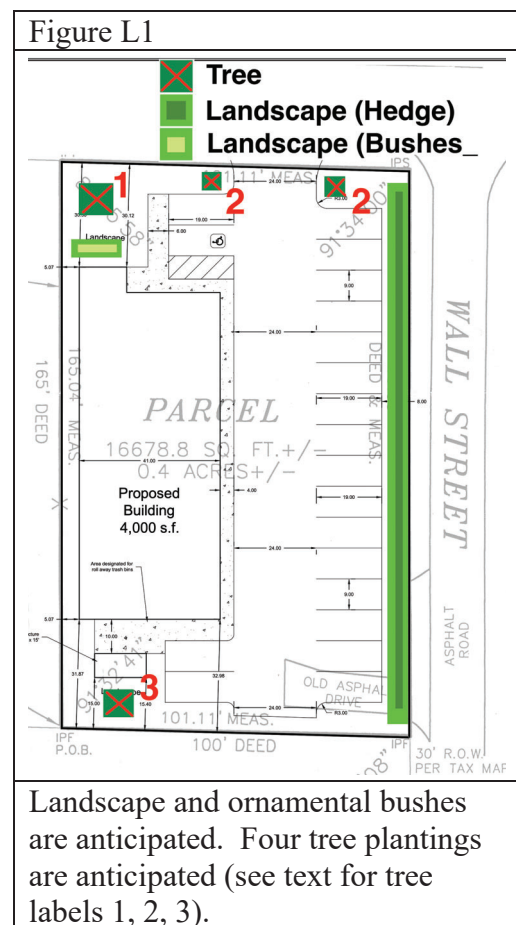
Landscaping Plan: Landscaping is planned including a hedge-like border along Wall Street, 4 planted trees, and an ornamental bush in front of the location is planned. Figure L1 (Landscape 1) shows anticipated location of landscaping. Along the right border of the landscape we anticipate placing a hedge. Two possible plantings are considered (Figure L2). We are consulting a gardner to select a hedge variety that provides an evergreen barrier with sustainable qualities in terms of care and maintenance.



Trees (labelled 1, 2, 3 in red) are planned as follows:

1. Tree with large growth potential (e.g. oak).
2. Two Japanese Maples, Dogwood, or similar small/medium trees
3. Tree with moderate growth potential (e.g. Big Leaf Magnolia)

The plan described above will increase the amount of non-grass planting on the property. A small amount of turf is also anticipated.



Kiwi Swim School, LLC
3951 Wall Street Traffic Statement

Summary of Document: During a preliminary review session with members of the Vestavia City Council, a request for a traffic assessment was requested. The purpose of this document is to define expected traffic at the swim school site. Traffic to and from the site, according to the site plan, will enter and exit on Bearden Court.

Basis for Estimated Traffic: About 4 swim instructors will be in the pool at any given time. Lesson mix is divided between babies and infants (typically solo lessons), and older children (up to 4 students per lesson). With this mix, and accounting for cancellations, up to 2.5 children per coach are expected per lesson block, or 10 children per half hour. At peak times, this would lead to 20 children per hour. Half of children come as solo lessons (1 child, 1 car). Half of children come in pairs or more (estimate 1 car, 2 children). We expect therefore at peak times 15 cars per hour might be present. While we assume all 15 cars will park, it would be common for some of individuals to drop off children and one parent (or nanny) and conduct some limited errands at the local restaurants or grocer. Further, among parkers with a single child, individuals who do park will park for the duration of the lesson and leave.

Estimating Traffic, and Peak Times:

Based on experience, we estimate the majority of automobile traffic to our site will occur in the morning between the hours of 830 AM and 11 AM, and after 2 PM, with a relative lull in child-related traffic between 11-2 (a common nap-time for clients). Peak season for swim lessons is in the spring, leading up to the summer. Less lessons are expected in the late fall, early winter, and around holidays. Lessons typically end at 8 PM. Lessons occur in half hour increments and will be staggered, and therefore traffic is anticipated to move in and out of the site throughout the hour. Table T1 shows our estimated auto traffic numbers per hour during peak summer season (Maximum) and more normal traffic at other times of year (Minimum and Average). Less traffic is anticipated at other times of year. While some clients will park, some clients may drop off children and conduct an errand – such as driving by a local restaurant or grocer. We assume, based on experience, that 30-50% of clients will have multiple clients in one car (siblings, or carpool).

Table T1: Estimated Car Count

Hourly*	Minimum	Maximum	Average
7-8	0	6	3
8-9	0	8	4
9-10	6	15	9
10-11	8	15	9
11-12	6	12	8
12-1	0	6	0
1-2	0	6	0
2-3	0	6	0
3-4	6	15	8
4-5	8	15	12
5-6	8	15	12
6-7	4	9	6
7-8	4	6	4
Total	50	134	75

*Lessons are scheduled typically on the half hour, leading to typically 2 cohorts of vehicles every hour. During peak season lessons on 15-minute increments over 4-5 swim coaches can buffer any issues with flow. Not all traffic leads to parking as there are local amenities (restaurants, grocer) that will lead our clients to conduct some errands during lessons.

Future Land Use

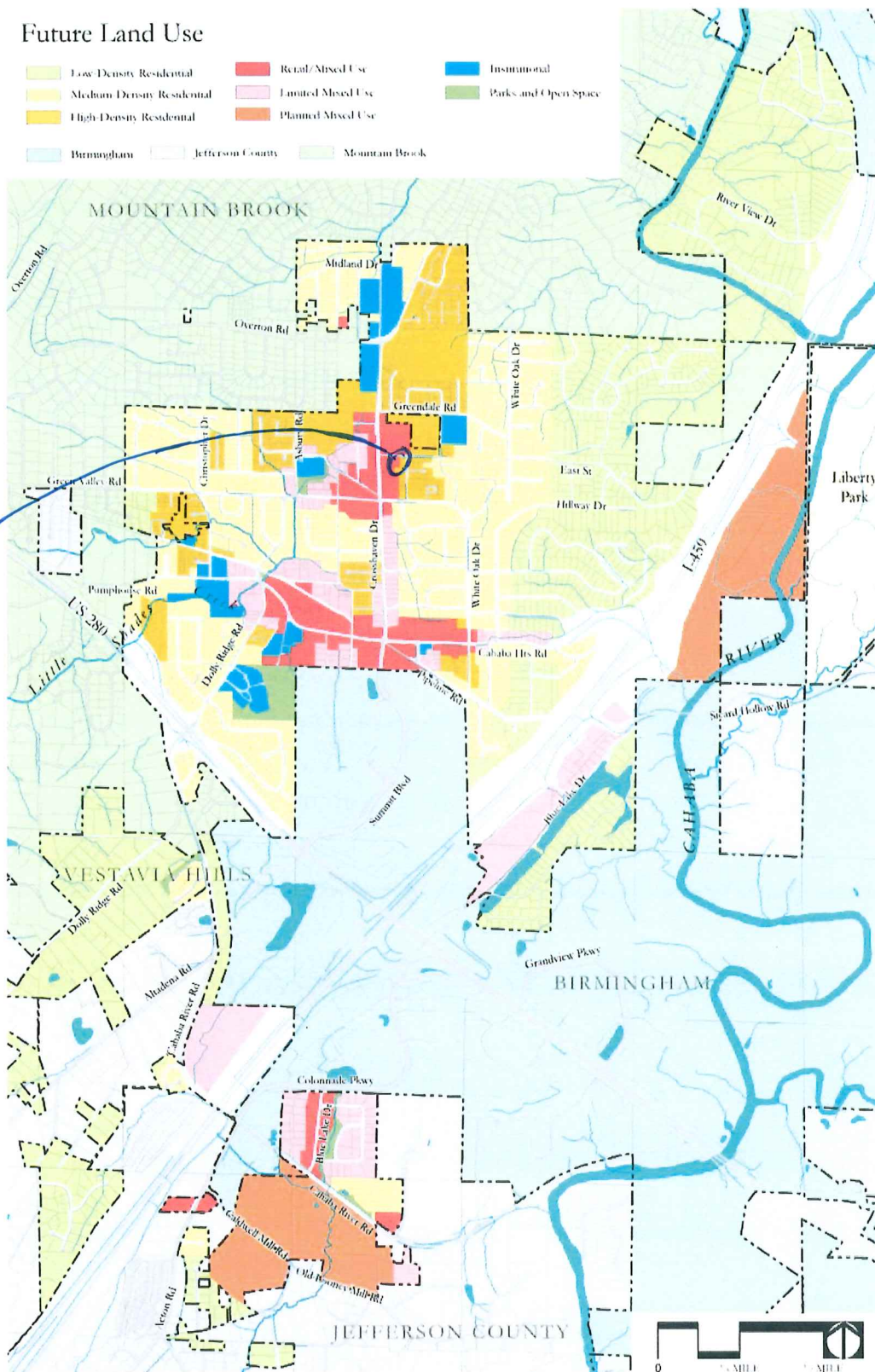
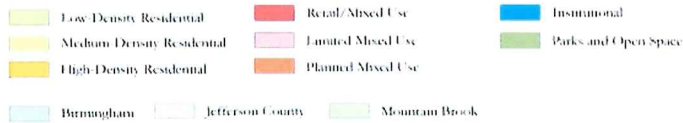


Figure 4: Future Land Use Map

ORDINANCE NUMBER 3150

AN ORDINANCE CALLING AN AD VALOREM SCHOOL TAX ELECTION IN THE CITY OF VESTAVIA HILLS ON MAY 9, 2023

BE IT ORDAINED by the City Council (the "Council") of the City of Vestavia Hills (the "City"), in the State of Alabama, as follows:

Section 1. Findings of Fact. The Council, upon evidence duly submitted to and considered by it, does hereby find and declare that the following facts are true and correct:

(a) Pursuant to Amendment No. 56 to the Constitution of Alabama of 1901 (the "Alabama Constitution"), proceedings taken under the Alabama Constitution and elections held in the City on April 28, 1970, May 8, 1990, and March 11, 2014, the City presently levies, without limit as to time, a special annual ad valorem tax (the "Amendment No. 56 School Tax") at the rate of 25.6 mills per dollar (2.56%) of the assessed value of taxable property in the City, for use by the Vestavia Hills City Board of Education (the "Board of Education") for public school purposes.

(b) Pursuant to Section 217(f) of the Alabama Constitution, and at the request of the Board of Education, the Council, by resolution adopted January 23, 2023, following a public hearing, proposed to increase the rate at which it levies the Amendment No. 56 School Tax from the present rate of 25.6 mills on each dollar to a rate of 35.4 mills on each dollar (an increase of 9.8 mills on each dollar) of the assessed value of taxable property in the City.

(c) It is expected that there will be introduced in the 2023 Regular Session of the Legislature of Alabama a bill which, if enacted, will approve the said increase, subject to favorable vote of the qualified electors of the City who vote at an election called to approve the said increase.

(d) The levy of the Amendment No. 56 School Tax at the increased rate of 35.4 mills on each dollar, if approved by the electorate, shall be in continuation of the levy of the Amendment No. 56 School Tax.

Section 2. Call of Election. A special municipal election is hereby called to be held in the City on Tuesday, the 9th day of May, 2023, between the hours of 7:00 a.m. and 7:00 p.m. for the purpose of submitting the following question or proposition to the qualified electors of the City and determining by ballot their will with respect thereto:

Whether the City shall be authorized to levy and collect, in addition to all other taxes now or hereafter authorized, the special annual ad valorem tax at the per annum rate of 35.4 mills on each dollar of the assessed valuation of the taxable property in the City referred to in the notice of election set out in Section 3 of this ordinance.

Section 3. Notice of Election. The Mayor is hereby directed to give notice of the said election in the manner provided by law in substantially the following form by posting in (i) the Vestavia Hills City Hall, 1032 Montgomery Highway, (ii) the Vestavia Hills Civic Center, 1090 Montgomery Highway, (iii) the Vestavia Hills City Board of Education, 1204 Montgomery Highway, (iv) the Vestavia Hills Library in the Forest, 1221 Montgomery Highway, and (v) the New Merkel House, 2150 Hollis Crossing; the said posting to be made not later than Tuesday, March 7, 2023:

NOTICE OF SPECIAL MUNICIPAL ELECTION

Notice is hereby given that a special municipal election will be held in the City of Vestavia Hills in the State of Alabama on Tuesday, the 9th day of May, 2023, between the hours of 7:00 a.m. and 7:00 p.m., Central Time, at which there will be submitted to the qualified electors of the said City, for their determination by ballot, the following proposition:

Shall the City of Vestavia Hills be authorized to levy and collect at the rate of 3.54% (or 35.4 mills on each dollar) of the assessed value of taxable property in the City (being an increase of 9.8 mills), the special ad valorem tax authorized at elections held on April 28, 1970, May 8, 1990, and March 11, 2014, and now being levied at the rate of 25.6 mills; said tax at the increased rate of 35.4 mills to be levied and the proceeds thereof to be used by the Vestavia Hills City Board of Education for public school purposes in the City; said increase to be effective for each tax year of the City commencing with the tax year for which taxes of the City will become due and payable on October 1, 2023, and continuing for each successive tax year thereafter, without limit as to time?

The said election shall be at the following regularly established voting places in the City at which shall be cast the ballots of the electors customarily voting at the said respective places:

<u>Polling District No.</u>	<u>Polling Location</u>
1	Shades Mountain Baptist Church 2017 Columbiana Road Vestavia Hills, Alabama 35216
2	Vestavia Hills Methodist Church 2061 Kentucky Avenue Vestavia Hills, Alabama 35216
3	Mountaintop Community Church 225 Centerview Drive Vestavia Hills, Alabama 35216
4	Vestavia Hills Civic Center 1090 Montgomery Highway Vestavia Hills, Alabama 35216

5 Cahaba Heights Baptist Church
3800 Crosshaven Drive
Vestavia Hills, Alabama 35243

6 The Church at Liberty Park
12001 Liberty Parkway
Vestavia Hills, Alabama 35243

Absentee Ballot Box Vestavia Hills City Hall
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

By order of the City Council.

Mayor of the City of Vestavia Hills

(End of form of notice)

Section 4. Form of Ballot. The following is hereby adopted as the form of the official ballot to be used at the said election on the proposition referred to in the Notice of Election set out in Section 3 of this ordinance, which ballot shall be prepared under the direction of the City Clerk for use in the voting machines at the respective voting places:

OFFICIAL BALLOT

SPECIAL MUNICIPAL TAX ELECTION
9.8 MILL INCREASE IN EXISTING 25.6 MILL SCHOOL TAX
FOR PUBLIC SCHOOL PURPOSES IN THE
CITY OF VESTAVIA HILLS, ALABAMA

MAY 9, 2023

INSTRUCTIONS TO VOTERS: [The appropriate instructions to voters shall be printed here.]

PROPOSITION

Shall the City of Vestavia Hills be authorized to levy and collect, at the rate of 3.54% (or 35.4 mills on each dollar) of the assessed value of taxable property in the City (being an increase of 9.8 mills), the special ad valorem tax authorized at elections held on April 28, 1970, May 8, 1990, and March 11, 2014, and now being levied at the rate of 25.6 mills; said tax at the increased rate of 35.4 mills to be levied and the proceeds thereof used by the Vestavia Hills City Board of Education for public school purposes in the City; said increase to be effective for each tax year of the City commencing with the tax year for which taxes of the City will become due and payable

on October 1, 2023, and continuing for each successive tax year thereafter, without limit as to time?

() FOR said proposed 9.8 mill increase in existing 25.6 mill tax, resulting in said 3.54% (or 35.4 mills) additional rate of taxation commencing with the tax year for which municipal taxes will become due and payable in the City of Vestavia Hills on October 1, 2023, and for each consecutive tax year thereafter, the proceeds of which shall be used by the Vestavia Hills City Board of Education for public school purposes.

() AGAINST said proposed 9.8 mill increase in existing 25.6 mill tax, resulting in said 3.54% (or 35.4 mills) additional rate of taxation commencing with the tax year for which municipal taxes will become due and payable in the City of Vestavia Hills on October 1, 2023, and for each consecutive tax year thereafter, the proceeds of which shall be used by the Vestavia Hills City Board of Education for public school purposes.

The form of the official absentee ballot to be used at the said election shall be the same as the foregoing form of the official ballot with the following exceptions:

In lieu of the words "Official Ballot" appearing at the head of the form thereof, there shall be inserted in the official absentee ballot the words "Official Absentee Ballot"; and there shall be included with the official absentee ballot the forms of affidavit for absent voters substantially equivalent to the forms of affidavit prescribed therefor by law.

Section 5. Polling Places and Election Officials. The polling or voting places in the City for the holding of the said election are hereby designated and appointed as follows:

<u>Polling District No.</u>	<u>Polling Location</u>
1	Shades Mountain Baptist Church 2017 Columbiana Road Vestavia Hills, Alabama 35216
2	Vestavia Hills Methodist Church 2061 Kentucky Avenue Vestavia Hills, Alabama 35216

3	Mountaintop Community Church 225 Centerview Drive Vestavia Hills, Alabama 35216
4	Vestavia Hills Civic Center 1090 Montgomery Highway Vestavia Hills, Alabama 35216
5	Cahaba Heights Baptist Church 3800 Crosshaven Drive Vestavia Hills, Alabama 35243
6	The Church at Liberty Park 12001 Liberty Parkway Vestavia Hills, Alabama 35243
Absentee Ballot Box	Vestavia Hills City Hall 1032 Montgomery Highway Vestavia Hills, Alabama 35216

The Council will by resolution hereinafter to be adopted appoint and designate the election officials to conduct the said election at the said voting places.

Section 6. Canvass of Returns and Declaration of Results. The Council shall meet in the Council Chambers in the City Hall at 12:00 p.m., on May 16, 2023, being the first Tuesday after the holding of the election, for the purpose of canvassing the results and declaring the results of said election. The record of the results of the election shall be recorded in the minutes and proceedings of the Council and when so recorded said records shall be conclusive evidence of the matters therein stated and of the validity of the election, unless contested as required by law.

Section 7. Conduct of Election. Except as otherwise specifically provided herein, said special municipal election shall be conducted, canvassed, and the results thereof declared in the same manner as provided in Chapter 46 of Title 11 of the Code of Alabama 1975, as amended.

ADOPTED and APPROVED this the 27th day of February, 2023.

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 3150 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 27rd day of February, 2023 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 _____, 2023.

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 5441

A RESOLUTION AUTHORIZING THE CITY MANAGER TO FUND A SPECIAL MUNICIPAL SCHOOL TAX ELECTION ON MAY 9, 2023

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The City Manager is authorized to expend up to \$75,000 for a special municipal election to be held on May 9, 2023 for the purpose of whether or not to raise ad valorem taxes for school purposes; and
2. Following the election, the City Manager shall submit an invoice detailing the expenses of said election to the Vestavia Hills Board of Education Superintendent for reimbursement of said expenses; and
3. This Resolution Number 5441 shall become effective immediately upon approval.

APPROVED and ADOPTED this the 23rd day of February, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 5442

A RESOLUTION AUTHORIZING THE INSTALLATION OF A NEW SUPPORT STRUCTURE FOR A SMALL CELL FACILITY TO BE LOCATED IN THE RIGHT-OF-WAY ADJACENT TO CERTAIN PROPERTIES IN THE CITY OF VESTAVIA HILLS

WHEREAS, on December 17, 2018, the City Council adopted and approved Ordinance 2814A to adopt regulations for small cell technology facilities (“Nodes”) in the City of Vestavia Hills, Alabama; and

WHEREAS, §2.B.7 recommends that said Nodes shall be collocated when possible, however, when not possible the request shall be recommended by the City Manager and then approved by the City Council following a public hearing; and

WHEREAS, on the 11th day of October, 2022, Acquanetta Love, on behalf of Crown Castle Fiber, LLC, submitted applications for a new support structure to be located in the right-of-way (“ROW”) adjacent to the following properties as detailed in Exhibit A which is attached and incorporated into this Resolution Number 5442 as if written therein; (1) 2285 Sterling Ridge Circle; (2) 1601 Gentilly Drive; (3) 2500 Chatwood Road; and (4) 181 Castlehill Drive; and

WHEREAS, a sign was erected on the ROW and the surrounding property owners were notified of a public hearing to be held on February 17, 2023 regarding said new support request; and

WHEREAS, the City Manager and the City Staff have reviewed the application and recommend approval of said request; and

WHEREAS, the Mayor and the City Council feel it is in the best public interest to accept the recommendation and authorize installation of said new support structure.

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

1. The Mayor and City Council hereby accept the recommendation of the City Manager and authorize the installation of a new support structure to be located in the ROW adjacent to (1) 2285 Sterling Ridge Circle; (2) 1601 Gentilly Drive; (3) 2500 Chatwood Road; and (4) 181 Castlehill Drive as detailed in the supporting information marked as Exhibit A, attached to and incorporated into this Resolution 5442 as if written fully therein; and
2. This Resolution shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 27th day of February, 2023.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

1032 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216

OFFICIAL NOTICE OF A PUBLIC HEARING

January 31, 2023

This is an OFFICIAL NOTICE to inform you of the time, date and other details of the public hearing which will be held in the Vestavia Hills City Hall on the subject as follows:

TIME/DATE OF HEARING: 6:00 P.M. February 27, 2023 Monday

PLACE OF HEARING: Vestavia Hills City Hall
1032 Montgomery Highway

BOARD: Vestavia Hills City Council

ACTION REQUESTED: Consideration of Installation of 35' Utility Pole with 5'6" embedment to be placed within the public right-of-way for Node Placement, Small Cell Wireless Facility

LOCATION OF PROPERTY: ROW adjacent to 2285 Sterling Ridge Circle;
See Enclosed Details for location and visual

NAME OF APPLICANT: Crown Castle Fiber LLC

REPRESENTED BY: Acquanetta Love

Sincerely,



Rebecca Leavings
City Clerk

INDIVIDUALS WITH DISABILITIES NEEDING SPECIAL SERVICES TO PARTICIPATE IN APPLICATIONS, ACTIVITIES, PROGRAMS OR SERVICES ARE REQUESTED TO COORDINATE THEIR NEEDS IN ADVANCE, WHEN TIME PERMITS. IF SPECIAL ACCOMMODATIONS ARE REQUIRED, PLEASE CONTACT THE CITY CLERK, (205) 978-0179.

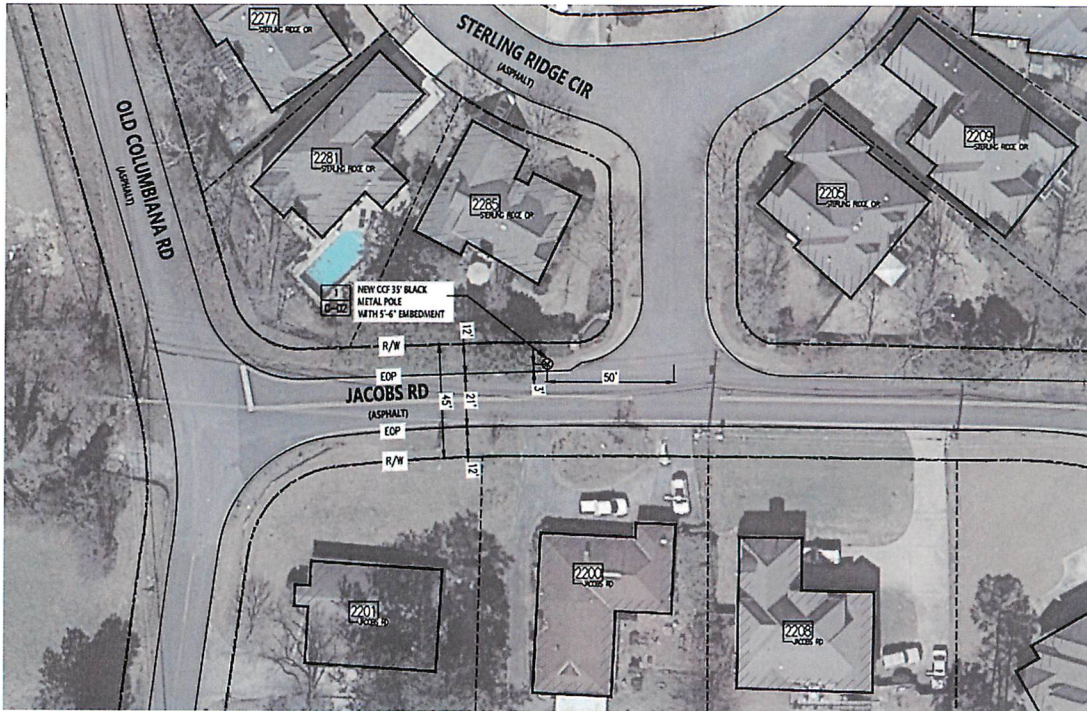
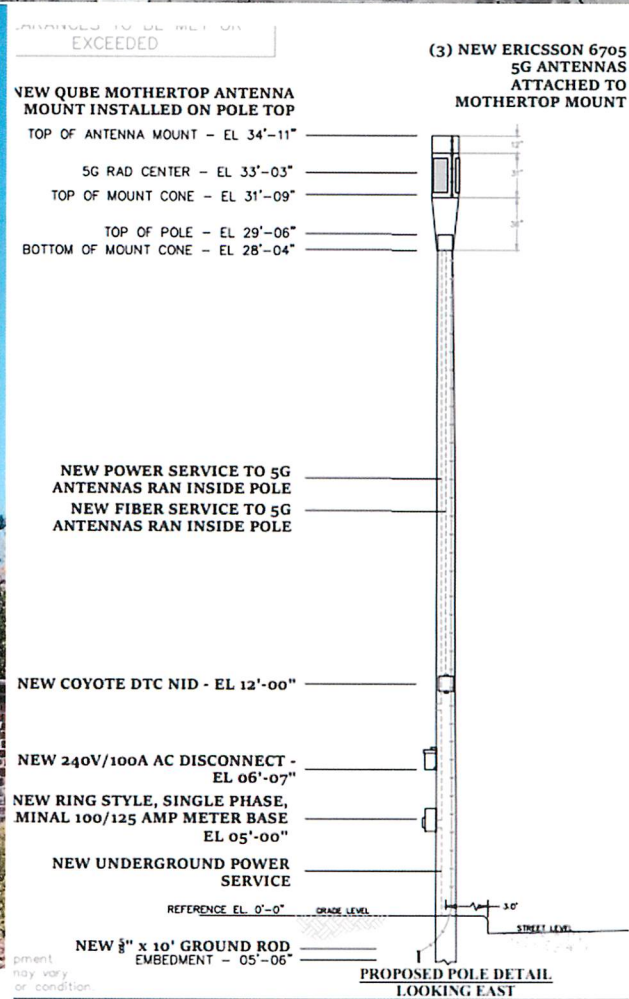


PHOTO SIMULATION



CITY OF VESTAVIA HILLS

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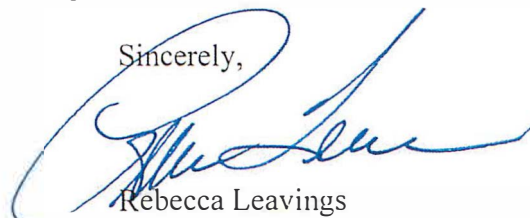
ACTION REQUESTED: Consideration of Installation of 35' Utility Pole with 5'6" embedment to be placed within the public right-of-way for Node Placement, Small Cell Wireless Facility

LOCATION OF PROPERTY: ROW adjacent to 1601 Gentilly Drive; See
Enclosed Details for location and visual

NAME OF APPLICANT: Crown Castle Fiber LLC

REPRESENTED BY: Acquanetta Love

Sincerely,



Rebecca Leavings
City Clerk

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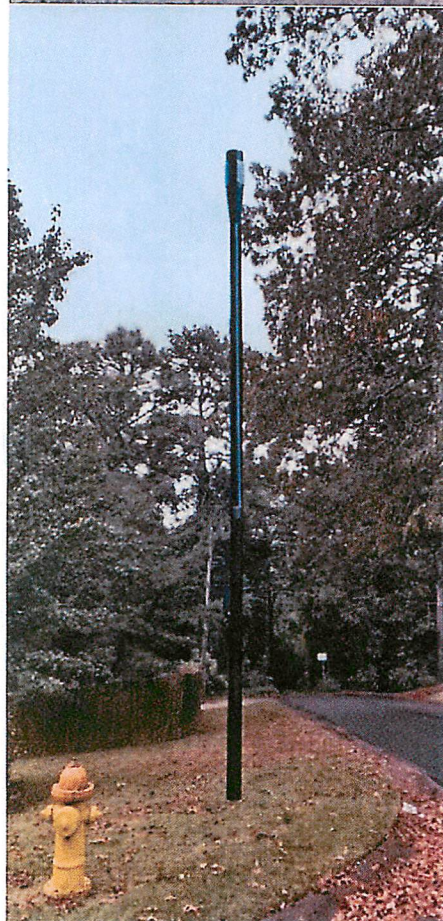
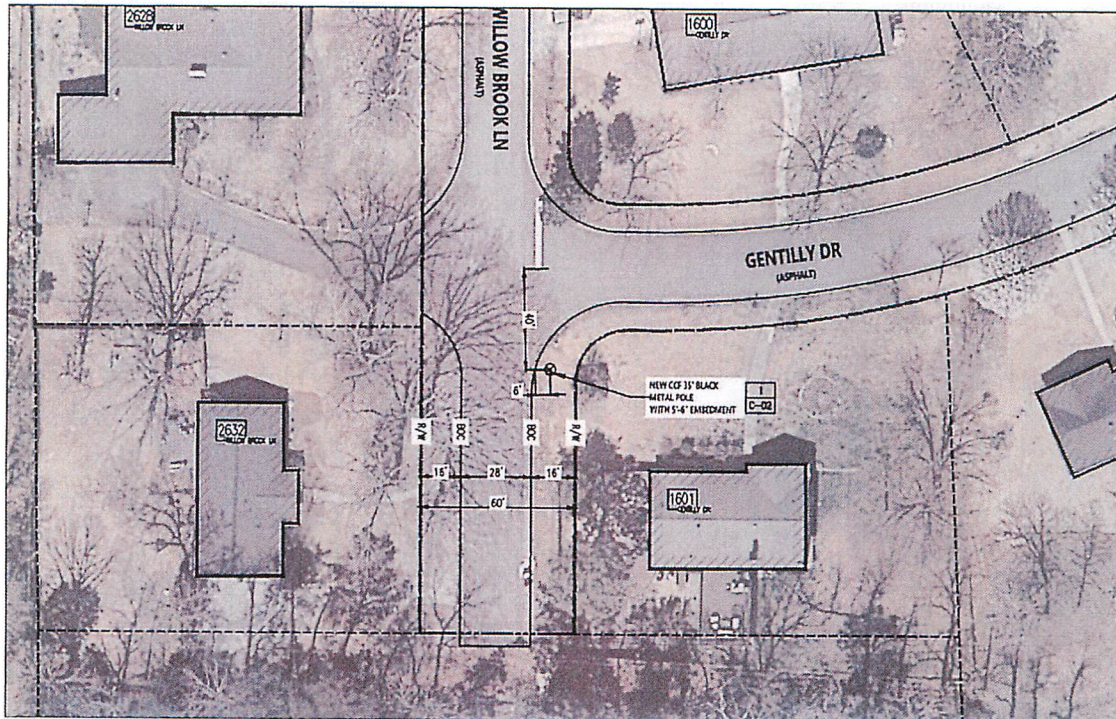
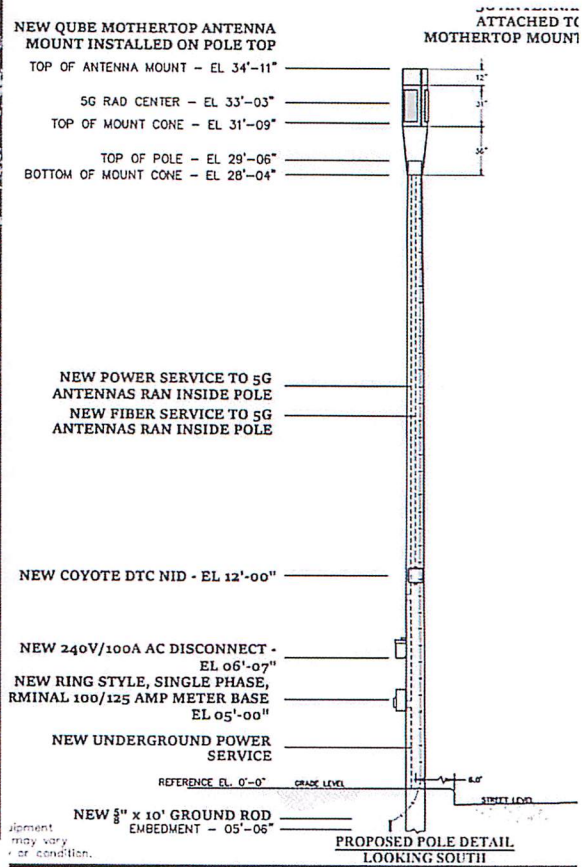


PHOTO SIMULATION



CITY OF VESTAVIA HILLS

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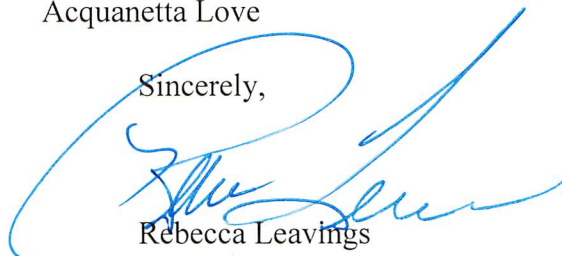
ACTION REQUESTED: Consideration of Installation of 35' Utility Pole with 5'6" embedment to be placed within the public right-of-way for Node Placement, Small Cell Wireless Facility

LOCATION OF PROPERTY: ROW adjacent to 2500 Chatwood Road; See Enclosed Details for location and visual

NAME OF APPLICANT: Crown Castle Fiber LLC

REPRESENTED BY: Acquanetta Love

Sincerely,



Rebecca Leavings
City Clerk

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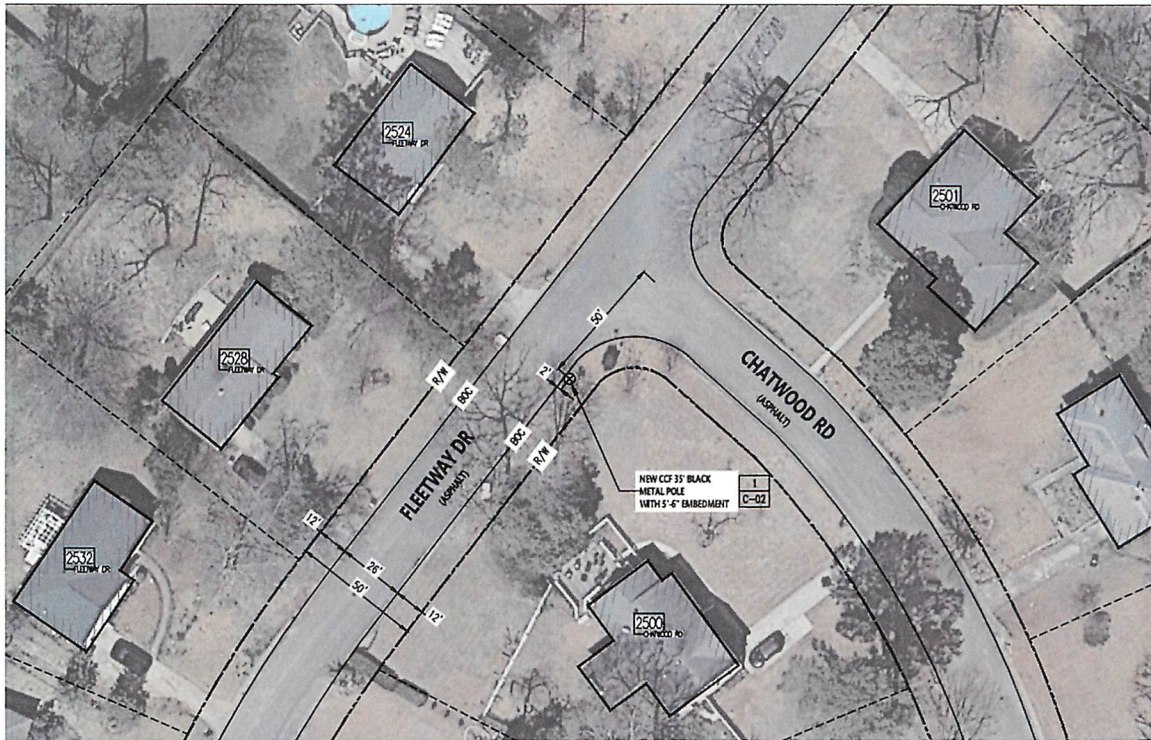
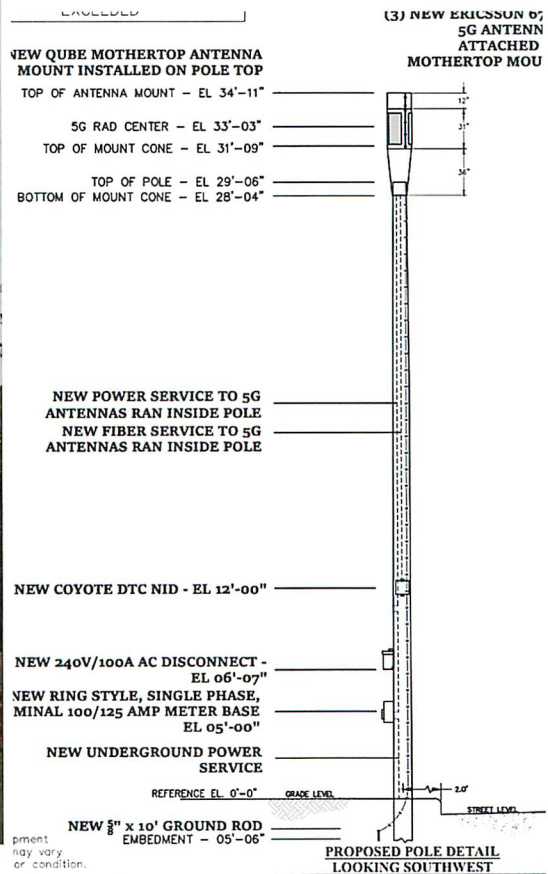


PHOTO SIMULATION



CITY OF VESTAVIA HILLS

**1032 MONTGOMERY HIGHWAY
VESTAVIA HILLS, ALABAMA 35216**

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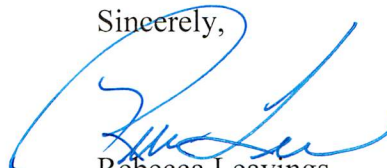
ACTION REQUESTED: Consideration of Installation of 35' Utility Pole with 5'6" embedment to be placed within the public right-of-way for Node Placement, Small Cell Wireless Facility

LOCATION OF PROPERTY: ROW adjacent to 181 Castlehill Drive; See Enclosed Details for location and visual

NAME OF APPLICANT: Crown Castle Fiber LLC

REPRESENTED BY: Acquanetta Love

Sincerely,



Rebecca Leavings
City Clerk

INDIVIDUALS WITH DISABILITIES NEEDING SPECIAL SERVICES TO PARTICIPATE IN APPLICATIONS, ACTIVITIES, PROGRAMS OR SERVICES ARE REQUESTED TO COORDINATE THEIR NEEDS IN ADVANCE, WHEN TIME PERMITS. IF SPECIAL ACCOMMODATIONS ARE REQUIRED, PLEASE CONTACT THE CITY CLERK, (205) 978-0179.

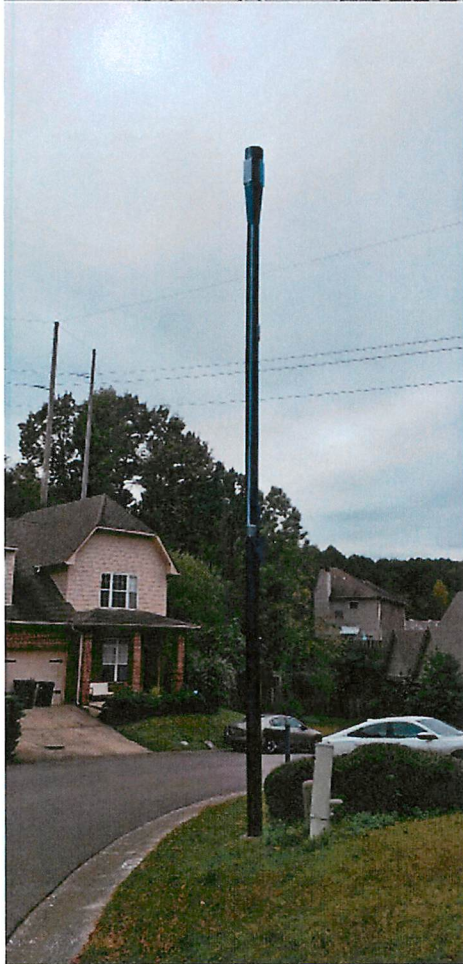
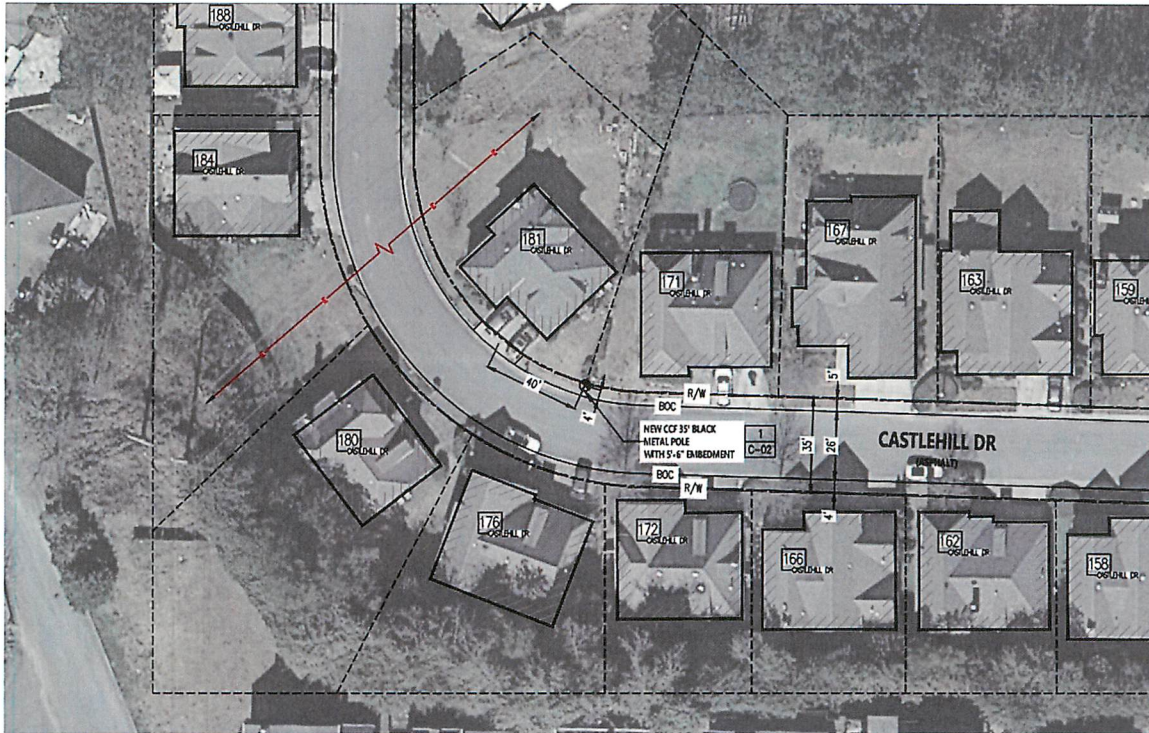


PHOTO SIMULATION

ALL REQUIRED NEARBY CLEARANCES TO BE MET OR EXCEEDED

NEW QUBE MOTHERTOP ANTENNA MOUNT INSTALLED ON POLE TOP

- 5G RAD CENTER - EL 33'-03"
- TOP OF MOUNT CONE - EL 31'-09"
- TOP OF POLE - EL 29'-06"
- BOTTOM OF MOUNT CONE - EL 28'-04"

(3) NEW ERICSSON 6701 5G ANTENNAS ATTACHED TO MOTHERTOP MOUNT

- NEW POWER SERVICE TO 5G ANTENNAS RAN INSIDE POLE
- NEW FIBER SERVICE TO 5G ANTENNAS RAN INSIDE POLE

- NEW COYOTE DTC NID - EL 12'-00"
- NEW 240V/100A AC DISCONNECT - EL 11'-00"

- NEW RING STYLE, SINGLE PHASE, TERMINAL 100/125 AMP METER BASE EL 05'-00"

- NEW UNDERGROUND POWER SERVICE

REFERENCE EL 0'-0" GRADE LEVEL

- NEW 3" x 10' GROUND ROD EMBEDMENT - 05'-06"

Equipment may vary by or condition.

PROPOSED POLE DETAIL LOOKING EAST