



CITY OF SPRINGDALE  
Committee Agendas  
Monday, March 17<sup>th</sup>, 2014  
Multi-Purpose Room #236  
City Administration Building  
Meetings begin at 5:30 p.m.



Ordinance Committee, Chairman Mike Overton:

1. **An Ordinance** amending Article 7 of the Zoning Ordinance of the City of Springdale, Arkansas, and for other purposes, presented by Patsy Christie, Planning Director and Ernest Cate, City Attorney. **Pg.'s 2-17**
2. **Discussion** concerning fees associated with the rezoning application, presented by Mike Overton, Chairman. **Pg.'s 18-20**

Finance Committee, Chairman Brad Bruns:

3. Tabled from 03-03-14; **A Resolution** authorizing a Master Lease Agreement with Verizon Wireless, presented by Ernest Cate, City Attorney. **Pg.'s 21-34**

Parks & Recreation Committee, Chairman Brad Bruns:

4. Tabled from 03-03-14; **A Presentation** about floating wetlands by Sydney Hines from the E.A.S.T. Program at Springdale High School; introduced by Rick McWhorter, Director of Parks & Recreation Department. **Pg.'s 35-41**
5. **A Discussion** concerning Tyson Park Fields, by Springdale Booster Club Board Members Nikki Jonson, and Ms. Davis.

Fire & Police Committee, Chairman Eric Ford:

6. **A Resolution** amending Section 4.10 of the Personnel and Procedures Manual for the City of Springdale, Arkansas, presented by Mike Irwin, Fire Chief. **Pg.'s 42-45**
7. **A Resolution** adopting the City of Springdale, Arkansas Emergency Operations Plan for the City of Council and the City of Springdale, presented by Mike Irwin, Fire Chief. **Pg. 46**
8. **A Resolution** authorizing the Mayor and City Clerk to enter into an agreement for Automatic Mutual Aid between the Springdale Fire Department and the Lowell Fire Department, presented by Mike Irwin, Fire Chief. **Pg.'s 47-53**
9. **A Resolution** authorizing the Mayor and City Clerk to enter into an agreement for emergency medical services with Benton County, Arkansas, presented by Mike Irwin, Fire Chief. **Pg.'s 54-58**
10. **A Resolution** authorizing execution of a construction management contract for fire department improvement projects in the 2012 Bond Improvement Program, presented by Alan Pugh, Director of Engineering. **Pg.'s 59-117**

Street & CIP Committee, Chairman Rick Evans:

11. **A Discussion** concerning definition of truck in 114-86, presented by Ernest Cate, City Attorney. **Pg.'s 118-121**
12. **A Resolution** authorizing a joint street project with the City of Bethel Heights, presented by Sam Goade, Director of Public Works and Ernest Cate, City Attorney. **Pg. 122**
13. **A Resolution** by the City Council of the City of Springdale to appropriate funds for planting trees on Don Tyson Parkway, presented by Mayor Doug Sprouse. **Pg.'s 123--124**

Health, Sanitation & Property Maintenance Committee, Chairman Jim Reed:

14. **A Discussion** concerning the former Apollo Theater at 308 W. Emma Avenue, presented by Mike Chamlee, Chief Building Official.

Personnel Committee, Chairwoman Kathy Jaycox:

15. **A Resolution** amending Section 4.10 of the Personnel and Procedures Manual for the City of Springdale, Arkansas, presented by Ernest Cate, City Attorney. **Pg.125**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING ARTICLE 7 OF THE ZONING ORDINANCE OF THE CITY OF SPRINGDALE, ARKANSAS, AND FOR OTHER PURPOSES.**

**WHEREAS**, Article 7 of the Zoning Ordinance of the City of Springdale, Arkansas, contains regulations pertaining to off-street parking and loading requirements;

**WHEREAS**, Article 7 of the Zoning Ordinance of the City of Springdale, Arkansas, needs to be amended to update the requirements as to off-street parking, parking areas, storage areas, entrance/exit drives, surfacing, etc.;

**WHEREAS**, it is in the best interest of the City of Springdale, Arkansas, for the City Council of the City of Springdale, Arkansas, to amend Article 7 of the Zoning Ordinance of the City of Springdale, Arkansas; and

**WHEREAS**, a public hearing was held before the Springdale Planning Commission on March 4, 2014, after notice was given of said hearing as required by law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS:**

**Section 1:** Article 7 of the Zoning Ordinance of the City of Springdale, Arkansas, is hereby repealed in its entirety, and is hereby replaced with a new Article 7, the language of which is attached hereto and is incorporated herein by reference.

**Section 2:** All other provisions of the Zoning Ordinance of the City of Springdale, Arkansas, not specifically amended by this Ordinance shall remain in full force and effect.

**Section 3: Emergency Clause.** It is hereby declared that an emergency exists and this ordinance being necessary for the preservation of the health, safety and welfare of the citizens of Springdale, Arkansas, shall be effective immediately upon its passage and approval.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_,  
2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

**ATTEST:**

\_\_\_\_\_  
Denise Pearce, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Ernest B. Cate, City Attorney

## ARTICLE 7: OFF-STREET PARKING AND LOADING

### Sec. 1. Purpose and intent.

This article is designed to prevent or alleviate the congestion of the public streets and to promote the safety and welfare of the public. This article establishes herein minimum requirements for the off-street parking, loading and unloading of motor vehicles appropriate to each land use and its intensity in relation to other land uses.

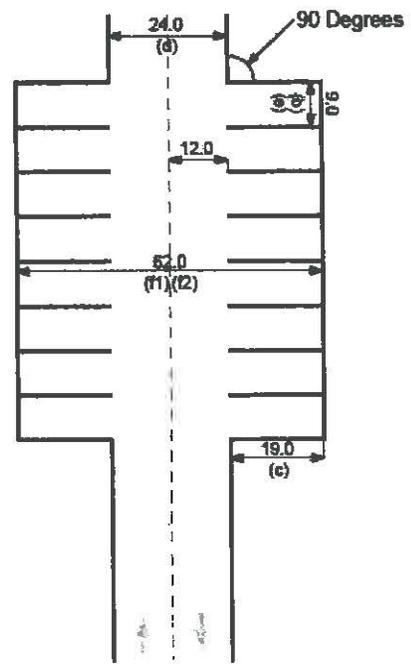
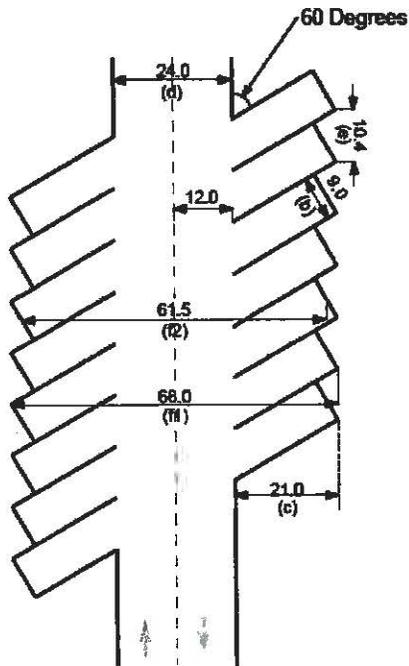
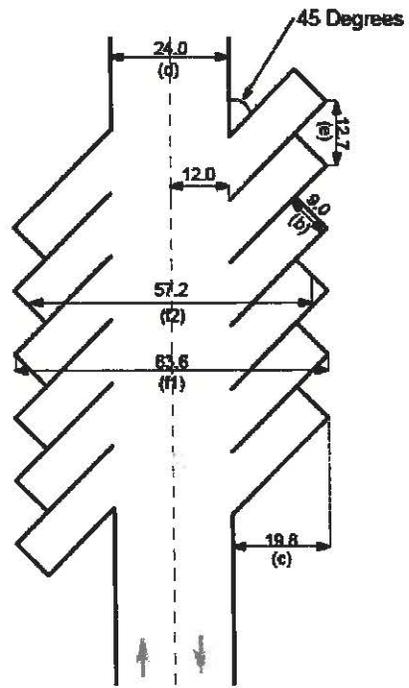
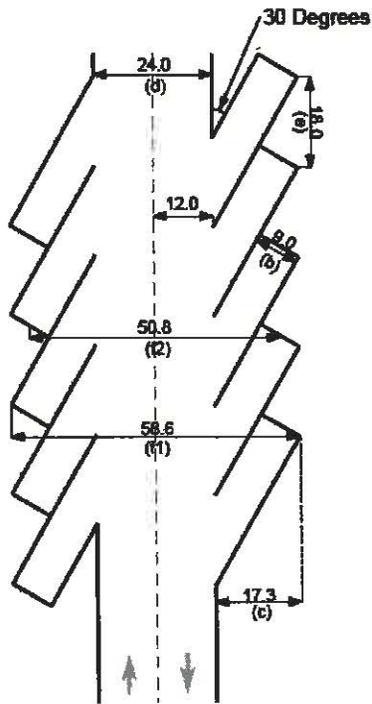
### Sec. 2. Applicability.

- 2.1 **General conditions.** The requirement to provide and maintain the required off-street parking space and loading areas shall be the responsibility of the operator and owner of the use and the operator and owner of the land on which off-street parking and loading areas is required to be provided.
- 2.2 **Zoning districts.** These requirements shall be provided in all zoning districts. Such parking and loading shall be provided off the street right-of-way for each use of land within the City and as demand is created for each use.
- 2.3 **New construction, expansion, new use.** With construction or expansion in capacity of a building, structure, or parking area or if another use is established on the lot, off street parking shall be provided in accordance with this Article.
- 2.4 **Existing spaces.** Parking spaces used in connection with an existing or continuing use or building on the effective date of this ordinance, up to the number required by this ordinance shall be continued and may not be counted as serving a new structure or addition.

### Sec. 3. Parking dimensions.

- 3.1 **Standard 90° parking space.** An off-street parking space shall consist of a nine feet (9') by nineteen feet (19') space located off the street right-of-way; adequate for parking an automobile with room for opening doors on both sides; together with properly related access to a public street or alley and maneuvering room.
- 3.2 **Access drive width.** If the off-street parking spaces do not abut on a street, alley or easement of access, there shall be provided an access drive of at least ten feet (10') in width in the case of a dwelling and at least fifteen feet (15') in width in all other cases leading from the street to the parking.
- 3.3 **Angle parking spaces.** Where different parking angles are utilized for off-street parking the following widths, depths and maneuvering areas shall be followed:

	Width (ft.)	Depth (ft.)	Maneuvering Area (ft.)
Parallel	9	22	11
30° Angle	18	17.3	12
45° Angle	12.7	19.8	12
60° Angle	10.34	21	12
90° Angle or Right Angle	9	19	24



- 3.4 **Compact parking spaces.** Spaces for compact parking may be permitted for up to twenty percent (20%) of total spaces in a parking lot which contains at least ten (10) parking spaces, which shall be clearly marked either on the pavement or by separate marker. The width and depth of each compact car space shall be eight feet (8') wide and sixteen feet (16') deep.
- 3.5 **Minimum distance and setbacks.** Except for permitted entrance and/or exit drives, every off-street parking area shall be set back from the street right-of-way line a minimum of five feet (5').

#### **Sec 4. Location of off-street parking.**

- 4.1 **Maximum Distance.** All parking spaces provided pursuant to this article shall be on the same lot with the building or within three hundred feet (300') thereof the distance to any parking area as herein required shall be measured between the nearest point of the off-street parking facility and the nearest point of the building said parking area or facility is to serve.
- 4.2 **Satellite Lots.** When detached parking facilities or satellite parking lots are provided, they shall be located on property which is zoned to allow the principal use which this parking will serve or they must be approved by the board of adjustment. Parcels of land used as access to or from parking and/or loading areas for any land use shall conform to this requirement.
- 4.3 **Limitation of Detached or Satellite Parking Lots.** Off site parking shall not exceed twenty-five percent (25%) of the total number of spaces required by this article and shall not require the crossing of a collector or arterial street. The board of adjustment may authorize variance from this limitation for cause, which shall be an identifiable hardship with the submission of a written agreement by all parties involved identifying the spaces assigned and verifying no conflict by current users and recognizing the impact on future usage of the site. All off-site parking shall be noted on the official zoning map so as to assure maintenance of the requirement.
- 4.4 **Relationship to Adjacent Properties.** No off-street parking area, exclusive of access drives, shall be located within three feet (3') of any other property.

#### **Sec 5. Ownership**

The ownership of land upon which off-street parking is provided shall be the same as the ownership of land on which the principal use is located except in the C-3 Downtown District or by formal written agreement for the use of excess off-street parking executed and filed for said purpose. A conditional use permit is required for the parking on lot(s) not of the same ownership to count toward fulfillment of the parking requirements.

**Sec 6. Accessibility**

- 6.1 **ADA Requirements.** Accessibility for persons with disabilities in parking lots and building approaches shall be as required by the current ADA and as may from time to time be amended.
- 6.2 **Accessible spaces required.** The following table shall be used to determine the minimum number of accessible parking spaces to be provided for persons with disabilities.

Total Parking Spaces	Minimum Number of Accessible Spaces Required
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of Total
Over 1,000	20, plus 1 for each 100 over 1,000

**Sec. 7. Number of off-street parking spaces required.**

- 7.1 **Floor and Lot Area Defined.** For the purposes of applying requirements for off-street parking, floor area shall be defined as net floor area with the outside dimensions of a building, excluding halls, lobbies, and stairways, etc. The definition shall not include floor space within the building reserved for parking or loading of vehicles, and basement space or separate space used only for building maintenance and utilities.
- 7.2 **Uses Not Listed.** For all uses not covered in the standards below, the Planning Commission shall make a determination of the parking demand to be created by the proposed use, and the amount of parking then determined shall be the off-street parking requirement for the permitted use.
- 7.3 **C-3 Downtown District**
  - a. **New Structures.** New structures and additions shall meet the parking requirements based on the proposed use.

First Floor less than 3,000 sf	None
First Floor more than 3,000 sf	1 space/500 sf
Upper Floors – Residential	1 space/unit
Upper Floors – other	1 space/1,000 sf

- b. **Existing Structures.** The parking requirements of this section shall not apply to existing structures in the C-3 Downtown District.
- c. **Razed Structures.** Parking requirements shall be calculated based on the square footage of the new structure minus the amount of the square footage of the building footprint of the original structure.

7.4 **Standards.** The number of off-street parking spaces required for each use as set forth below. Separate off-street parking space shall be provided for each use located on a lot but may be combined and used jointly provided the sum total of parking space requirements for all uses are provided.

NUMBER OF PARKING SPACES REQUIRED	
Land Use	PARKING RATIO
<b>RESIDENTIAL</b>	
Single-Family Dwelling	Two (2) spaces for each dwelling unit outside the primary structure or garage, maximum allowed paved surface area shall not exceed forty percent (40%) of the total area of the front yard
Two-Family Dwelling	Two (2) spaces for each dwelling unit outside the primary structure or garage, maximum allowed paved surface area shall not exceed forty percent (40%) of the total area of the front yard
Multi-Family Dwelling	Three (3) spaces for each dwelling unit for the first twenty (20) dwelling units; two and one quarter (2.25) spaces for each dwelling unit for the next fifty (50) dwelling units; and one and three quarters (1.75) spaces for each dwelling unit for each dwelling unit over seventy (70) dwelling units
Manufactured Home	Two (2) spaces for each manufactured home outside the primary structure
Residential Care facility	One (1) space for each three (3) residential units
Nursing Home	One (1) space for each three (3) residents
Rooming house Boarding house	One (1) space for each guest accommodation
Bed and Breakfast	One (1) space for each sleeping/rental unit plus 1 space for the owner
Fraternity, sorority and dormitory	One (1) space for each two (2) students residing on the premises, plus one (1) space for each housemother or manager and each employee
Hotels and Motels	One (1) space for each bedroom plus one (1) parking space for each two (2) employees; plus one parking space for each two hundred (200) square feet of total floor area used for ballrooms, private meeting rooms and other similar places of assembly. Restaurant spaces per requirement below.

<b>INSTITUTIONAL</b>	
Church Sanctuary	One (1) parking space for each four (4) seats based on maximum seating capacity in the principal assembly room; provided, however, that churches may establish joint parking facilities for the required spaces not to exceed fifty percent (50%) of the required number of spaces, with businesses, institutions and agencies within a three hundred feet (300') of the facility without the crossing of a collector or arterial street. A written agreement by all parties involved is required identifying the spaces assigned and verifying no conflict by current users and recognizing the impact on future usage of the site.
Community Center, library, museum, civic club, lodge	One (1) space for each five hundred (500) square feet of net floor area
Detention facility	One (1) space for each five hundred (500) square feet of net floor area
Auditoriums, Arenas, Theatres (and similar places of public assembly)	One (1) space for each four (4) seats
Lodge halls, Exhibition halls, Clubs (and similar places of public assembly)	One (1) space for each two hundred (200) square feet. of net floor area
Schools and Institutions --Nursery, Kindergarten and Day-Care Centers	One (1) space for each three hundred (300) square feet of net floor area and one (1) space per employee plus on-site loading and unloading spaces shall be required at a rate of one (1) for each ten (10) children accommodated.
Schools and Institutions --Elementary (Grades 1-5)/ Middle School (Grades 6-7)	One (1) space per classroom plus one (1) space per employee plus stacking space for buses and automobiles shall be required on site.
Schools and Institutions -- Secondary School (Grades 8-12)	Six (6) spaces per classroom plus stacking spaces for buses and automobiles shall be required.
College, University, Business College or Trade School	One (1) space for each three hundred (300) square feet of net floor areas, or 1 space per four (4) students, whichever is greater
Hospital	One (1) space for each bed, plus one (1) space for each resident doctor, plus adequate reserved space for visiting doctors, plus one (1) space for each three (3) employees

<b>Offices</b>	
Business and Professional Office (and similar use of establishment)	1 space per 300 sq. ft. of net floor space. For structures larger than ten thousand (10,000) square feet, the above parking requirement shall be provided and the following percentage shall be taken to the remaining net floor area:
	10,001-20,000 sq. ft. – 95% of parking requirement
	20,001-30,000 sq. ft. – 90% of parking requirement
	30,001-40,000 sq. ft. – 85% of parking requirement
	40,000 sq. ft. and up - 80% of parking requirement
Medical Clinics	1 space per 300 sq. ft. of net floor space
<b>COMMERCIAL USES</b>	
General Business and Retail Sales (except as otherwise provided herein)	One (1) space per two hundred (200) square feet of net floor area up to ten thousand (10,000) square feet, the above parking requirement shall be taken of the remaining net floor area:
	10,001-20,000 sq. ft. – 95% of parking requirement
	20,001-30,000 sq. ft. – 90% of parking requirement
	30,001-40,000 sq. ft. – 85% of parking requirement
	40,000 sq. ft. and up - 80% of parking requirement
Drive-Through Commercial Facilities	In addition to the other parking space requirement, holding or stacking spaces for each service window. Each stacking space shall be no less than nine feet (9') wide by twenty feet (20') long.
Bowling Alleys	Four (4) spaces per lane
Restaurants (and similar establishments serving food and beverages)	1 space per each four (4) occupants at the maximum permitted occupancy allowed under building code and 1 space per employee based on the largest shift
Personal Service Establishments (Barber, Beauty Shops, similar uses)	One (1) space for each employee plus one (1) space per each station
Food Service Supermarket and Convenience Type grocery store	1 space for each two hundred (200) square feet of net building area; or use the reduction permitted under General Business and Retail sale
Automotive Services passenger cars/light trucks (fueling station only, garages, automobile washing facilities & similar uses)	Four (4) spaces for each service bay or one (1) space for each three hundred (300) square feet of gross building area whichever is greater
Automotive Services heavy trucks and equipment (fueling station only, garages, automobile washing facilities and similar uses)	One (1) space for each one thousand (1,000) square feet of gross building

Fueling Station and Convenience Store	One (1) space per employee at maximum shift plus one (1) space per two hundred fifty (250) square feet of net floor area. Spaces at the pumps shall be counted as one-half (½) space toward the overall requirement
Furniture Stores	One (1) space for each one thousand (1,000) square feet of gross building
Mortuary or funeral parlor	One (1) parking space for each four (4) seats based on maximum seating capacity in the principal assembly room
Theatre, auditorium, stadium or arena	One (1) space for each four (4) seats
Other Recreational establishments	One (1) space for each two hundred (200) square feet of gross floor area
Swimming Pool	One (1) space for each six (6) persons lawfully permitted in the pool at one time
<b>Industrial Use</b>	
Manufacturing, Processing and Wholesaling (and similar uses or establishments)	One (1) space per 6000 square feet of gross floor area
Warehouse and storage	One (1) space for each one thousand two hundred (1,200) square feet of gross floor area.

7.5 **Combined facilities.** Off-street parking facilities required for two (2) or more uses located on the same building site may be combined and used jointly provided, however, that the total number of off-street parking spaces shall not be less than the sum of requirements for the various individual uses computed separately in accordance with the process set forth in this article. Those uses proposed for occupancy within an established development shall not occupy the site prior to the determination that the ordinance standard parking spaces available to the property for all uses meet the provisions of this section except that the number of spaces required for a previous legal use of any portion of the development shall be considered to be provided even if the spaces do not exist. Nonconforming parking rights may be carried forward to count as part of the parking requirement of a use replacing a previously established legal use.

**Sec. 8. PARKING AREA DESIGN AND MAINTENANCE**

- 8.1 **Access to Parking Spaces.** Each required off-street parking space shall open directly to an aisle or driveway of such width and design as to provide safe and efficient means of vehicular access to the parking space.
- 8.2 **Maneuvering Areas.** All parking areas except those serving one and two family dwellings on local streets shall be designed so that cars shall not be required to back into the street.
- 8.3 **Surface and Drainage.** All off-street parking areas shall be surfaced as follows:
  - a. Single-family and two-family dwelling shall provide a durable surface with suitable drainage.

- b. In all commercial, industrial, institutional and mixed use districts, all areas intended to be utilized for required parking spaces and associated driveways shall be paved with a durable surface including, but not limited to, hot asphalt, bituminous or concrete.
- c. Storage areas for heavy construction equipment that would damage the pavement may be exempt from the paving and surfacing requirement with an acceptable surface as follows:
  - i. May be located on gravel surfacing using best management practices so long as all appropriate stormwater impacts are mitigated, and all applicable buffers are in place when abutting public or private rights-of-way and residential zones.
  - ii. Graveled areas for heavy equipment are for said equipment only, and are not to be used for parking of commuter vehicles, commercial, vans, trucks, or other typical four-wheeled transportation vehicles that should be placed in surfaced parking lots.
  - iii. Heavy Equipment refers to heavy-duty vehicles, designed specifically for executing construction task, most frequently involving earthwork operations. They are known as, heavy machines, heavy trucks, construction equipment, engineering equipment, heavy vehicles, or heavy hydraulics.
  - iv. Equipment yards and storage areas in industrial zoning districts may be permitted as gravel areas provided such areas are delineated and physically separated from general public parking areas
  - v. The equipment and storage areas shall conform to the City specifications for street sub-base and base course, per plans to be approved by the City Engineer.
  - vi. General public parking and access areas in all cases shall be paved in accordance with City specifications.
  - vii. All vehicles must be operational and have a current registration/license.
  - viii. No heavy mechanical work is allowed. Light maintenance such as fluid changes, with the use of proper best management practices, tire changes, and other minor repairs are permitted.
  - ix. Inoperative vehicles are not permitted to be stored at the site.
  - x. Access roads shall be sufficient to carry the equipment without sustaining undue damage to the roads and prevent the tracking of materials onto the public street.
  - xi. Mud, run-off, erosion and drainage, shall be controlled at all times and contained on-site.
  - xii. Dust shall be mitigated during dry conditions.
  - xiii. Storage of oil, gas, or other fluids/materials associated with the maintenance of heavy equipment must comply with state law regulating the storage of hazardous materials.
  - xiv. Storage of construction related material such as aggregate, sand, soil or debris is prohibited.

- xv. Best management practices shall be taken to prevent leaks and spills. Any leaks and spills shall be immediately addressed.
- xvi. Variances to these requirements require a restrictive covenant, enforceable by the City, to be recorded with the title of the property limiting the use of the property accordingly.
- d. Farm dwellings and farm operations' are exempt from the paving requirement.
- e. City parks shall be exempt from the parking requirement if approved by the City Council.
- f. Heavy equipment storage in areas other than an industrial area by variance granted by the Planning Commission as follows:
  - i. The equipment and storage area may not exceed one-half (½) acre in size where all vehicles shall be stored.
  - ii. The storage area shall be setback from property lines in accordance with the setbacks required for structures in the zoning district in which the storage area is located.
  - iii. No more than the permitted number of pieces of heavy equipment may be stored at any one time.
  - iv. Heavy equipment may be stored and removed on a daily basis, subject to the hours of operation of 6:00 a.m. to 6 p.m. Monday-Friday, and 8:00 a.m. to 6:00 p.m. Saturdays, Sundays and Holidays.
  - v. All vehicles shall be screened from direct view through vegetation, or approved fencing/walls or other approved means.
  - vi. All vehicles must be operational and have a current registration/license.
  - vii. No heavy mechanical work is allowed. Light maintenance such as fluid changes, with property best management practices, tire changes, and other minor repairs are permitted.
  - viii. Inoperative vehicles are not permitted to be stored at the site.
  - ix. Access roads shall be sufficient to carry the equipment without sustaining undue damage to the roads and prevent the tracking of materials onto the public street.
  - x. Mud, run-off, erosion and drainage, shall be control at all times and contained on-site.
  - xi. Dust shall be mitigated during dry conditions.
  - xii. Storage of oil, gas, or other fluids/materials associated with the maintenance of heavy equipment must comply with state law regulating the storage of hazardous materials.
  - xiii. Store of construction related material such as aggregate, sand, soil or debris is prohibited.
  - xiv. Best management practices shall be taken to prevent leaks and

**8.4 Gravel driveway and parking areas.** The Planning Commission may authorize a portion of off-street parking spaces to be provided on pervious surfaces if the Commission finds that such spaces will be used only intermittently, either for special events or for seasonal peak parking demands or overflows in patronage of the principal use or uses as follows:

- a. **Seasonal Peak Parking**
  - i. The Planning Commission must approve a number or percentage of required parking spaces that may be provided on pervious surfaces and time limitations.
  - ii. The City Engineer is authorized to determine acceptable pervious surfaces.
  - iii. Parking spaces, aisles, etc. must be marked by flags, biodegradable dyes or paints, or some other method that does not kill grass or plants
  - iv. Pervious parking areas must be adequately drained.
  
- b. **Special Event Parking**
  - i. Can not be used for more than twenty (20) days in a calendar year
  - ii. Can not occur for more than ten (10) days in any thirty (30) day period
  - iii. Setback at least fifty (50) feet from any off-site residentially zoned lot or residential development area.
  - iv. Occur on the same lot or lots approved for the principal use to which they are accessory
  
- c. The number of days per year and the number of days within a thirty (30) day period that special event parking is permitted may be increased with Board of Adjustment approval as a special exception.
  
- d. All commercial and industrial gravel drives and parking area allowed shall be maintained to meet the following standards:
  - i. The surface of the driveway or parking area shall consist of a uniform layer of gravel evenly distributed from edge to edge, and shall be free of bare spots and vegetation.
  - ii. The depth of the gravel shall be a minimum of -4 inches.
  - iii. The material used for a gravel driveway or parking area shall be rock or crushed stone not more than 1 inch in diameter and shall not contain dirt, stick, construction debris or other foreign material. Sand, rock powder or other similar material less the one-eighth inch in diameter is not prohibited, but shall not be included in the measurement of minimum gravel depth.

**Sec. 9 Off-Street Loading**

In addition to all other requirements, on the same premises with every building, structure or part thereof hereafter erected, established or enlarged and occupied for manufacturing, storage, warehouse, goods, display, department store, wholesale, market, hotel, laundry, dry cleaning or other uses involving the receipt of distribution by vehicles of materials or merchandise, there shall be provided and maintained adequate space for standing, loading and unloading in order to avoid undue interference with public use of the street or alley.

- 9.1 Size of Off-Street Loading Spaces.** Such space, unless otherwise adequately provided for, shall include a twelve (12) foot by thirty (30) foot loading space and fourteen (14) foot height clearance. Where off-street loading space does not abut on a street, alley or easement of access there shall be provided an access drive of at least ten feet (10') in width leading from the street to the load area. Where the off-street loading spaces face a public street, the loading space shall be seventy feet (70') in length.
- 9.2 Location.** Such loading spaces may occupy all or any part of a required setback, but such space may not be located closer than twenty five feet (25') to any residential district unless wholly within a completely enclosed building or unless enclosed on all sides abutting the residential district by a wall or said fence at least eight feet (8') in height.
- 9.3 Number of Loading Spaces Required.** For every building or structure hereinafter constructed in any district for nonresidential purposes, or where material or merchandize is received or distributed by vehicles, an off-street loading space shall be provided and maintained on the same lot.
- 9.4 Substitution.** Parking spaces may not be substituted for a loading space or a loading space substituted for a parking space.
- 9.5 Standards.**

<b>Floor Area (sq. ft.)</b>	<b>Loading Spaces Required</b>
5,000 - 25,000	1
25,000 - 40,000	2
40,000 - 100,000	3
100,000 - 160,000	4
160,000 - 240,000	5
240,000 - 320,000	6
For each additional 90,000	1 added space

**Sec. 10 Use of Right-of-way**

No portion of any public street right-of-way shall be considered as fulfilling or partially fulfilling the off-street parking requirements of this article. No parking "bays" shall be allowed, except for residential service on residential streets. All commercial off-street parking areas and all residential off-street parking lots abutting streets shall be arranged so that ingress and egress is by forward motion of the vehicle. For the purpose of parking in the rear yard, any public dedicated alley may be used in computing the maneuvering area.

## **Sec. 11 Entrance/Exit Drives**

11.1 Slopes. For all subdivision plats approved after the adoption of this amendment; all vehicular entrance and/or exit drives for all residential uses shall not exceed a maximum slope of fifteen percent (15%) within the required setback area as determined by the zoning ordinance. For all subdivision plats approved prior to the adoption of this amendment; all vehicular entrance and/or exit drives for all residential uses shall not exceed a maximum slope of twenty percent (20%) within the required setback area as determined by the zoning ordinance. All vehicular entrance and/or exit drives for all residential and nonresidential uses along a street with minor collector or higher classification, as shown on the master street plan shall not exceed a maximum slope of ten percent (10%) within the required setback area as determined by the zoning ordinance.

### 11.2 Standards.

- a. Minimum width of drive for two-way traffic: Twenty-four feet (24').
- b. Minimum width of drive for one-way traffic: Fifteen feet (15').
- c. *Minimum width of drive through service lane*: Nine feet (9'), with appropriate stacking lanes to avoid conflicts with internal traffic flow.
- d. Maximum width of drive: Forty feet (40').
- e. Minimum radius to the face of the curb: Twenty-five feet (25').
- f. Minimum distance between drives on adjoining properties: Fifty feet (50').
- g. Minimum distance between drives on single tract: One hundred fifty feet (150').
- h. Minimum distance of drive from the project curb line at the street intersection:
  - Local streets: Forty feet (40');
  - Minor collector street: Sixty feet (60');
  - Major collector street: Eighty feet (80');
  - Arterial and Boulevard streets: One hundred twenty feet (120').

## **Sec. 12 Lighting**

Adequate lighting shall be provided if the parking facilities are used at night. This lighting shall be installed and maintained in a manner not to shine, reflect or cause glare into abutting premises or roads and highways.

**Sec. 13 Reduction of parking area.**

No automobile off-street parking facility shall be reduced in area or encroached upon by buildings, vehicle storage or any other use where such reduction or encroachment will reduce the area below that required.

**Sec. 14. Parking Garages**

Parking garages may be provided for satisfying the off-street parking requirements so long as it otherwise meets the provisions of this article. Exterior design of the parking garage must be compatible with the design of the area in which it meets the requirements of this article.

**11.1 Rezoning procedure initiated by private parties.**

- a. **Fee.** Any private party or parties desiring a zoning change shall pay a fee, as determined by resolution of the city council, to the city clerk to cover the costs of public notices, and other expenses.
- b. **Petition.** Any private party or parties desiring an amendment to the boundaries of the zoning districts of this article, upon payment of the above fee, shall submit a petition to the planning commission providing the following information:
  1. The name of the record title holder of the property provided by a copy of the warranty deed and the intended grantees if the property is subject to contract sale or title is to be otherwise conveyed.
  2. The zoning classification request for the property.
  3. A brief statement explaining the reason for the rezoning request, the intended use of the property, and the effect of property changes upon the surrounding land uses.
  4. A layman's description of the property.
  5. If the property to be rezoned is to be only a portion of the land described on the warranty deed then an accurate legal description provided by a copy of a recent survey certified by a registered land surveyor will be required.
  6. A scaled drawing of the property to be rezoned showing accurate lot lines, surrounding zoning, adjacent property owners names, vicinity map, and a north arrow.
  7. Evidence in the form of a signed affidavit, that notice has been given to all adjacent property owners of the project subject to the rezoning after the application has been accepted and placed on the planning commission agenda. The petitioner shall be responsible for providing such notice by certified mail, return receipt requested, to the last known address of such record owner(s) as certified by a licensed abstractor or a licensed land surveyor within the past sixty (60) days.
  8. The required affidavit and supporting exhibits (mailing receipts, list of adjacent property owners and copy of notice) shall be filed with the planning office no later than seven (7) days prior to the meeting date.
- c. **Public hearing.** Upon receipt of a petition for an amendment, the planning commission shall hold a public hearing on the proposed amendment, after:
  1. A notice has been published in a newspaper of general circulation in the city at least one time fifteen (15) days prior to the public hearing, which notice sets forth the time and place of such hearing and the amendment proposal.
  2. The Planning Department will post NOTICE OF PUBLIC HEARING sign(s) on said property for which a public hearing has been set at least ten (10) days prior to the hearing indicating the date and time of the hearing. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the front property line.
  3. The adjacent property owners of the described property has been notified by certified mail, return receipt requested, at least ten (10) days

- prior to the public hearing and the required affidavit has been submitted in accordance with subsection b.8. above.
4. The petitioner shall be present at the meeting for the matter to be considered. If the applicant is unable to attend, written authorization from the petitioner authorizing representation must be presented to the commission for the matter to be considered. Any decisions made by the designated agent shall be binding on the landowner.
- d. *Action by the planning commission.*
1. The planning commission shall hear the petitioner's request for rezoning at the public hearing and shall consider the petitioner's purposes for the re-zoning request as well as public comments. The amendment, as presented or modified by the action following the public hearing, shall be voted on by the planning commission or tabled for further action. If recommendation for approval is granted by the planning commission, the matter will be referred to the city council in the form of an ordinance, (ordinance to be prepared by staff), for the approval of the city council.
  2. Should the planning commission determine a lesser impacting zone would be more appropriate to meet the purposes of the petitioner and would cause less impact on the neighboring parties, the commission is empowered to reduce the zoning classification requested to a different classification, if the petitioner concurs. After consideration of comments from the public, the commission may vote thereon without the necessity of further publication notice. Any change in zoning classification to a higher or more impacting zone would require notice be republished and a public hearing to be held again.
  3. The petitioner's request for rezoning may be tabled one time to a later meeting only by action of the planning commission and only after the commission has heard comments from adjacent property owners and interested parties. Tabling a petition one time by the planning commission will not require an additional filing fee or re-notification. Should the petition be tabled again, it will be treated as a withdrawal of the rezoning request, and will require the refiling of the petition complete with an additional filing fee and proper re-notifications before the matter will be placed on the agenda.
  4. If a petitioner would like to withdraw a request, the petitioner may do so at the public hearing or in writing prior to the meeting. Withdrawal by a petitioner will require the refiling of the application complete with an additional filing fee and proper re-notifications before the matter will be placed on the agenda.
- e. *Action by the city council.* The city council, by majority vote, may by ordinance adopt the recommended amendment submitted by the planning commission or may return the proposed amendment to the planning commission for further study and recommendation. If action is not taken by the city council within sixty (60) days of the planning commission's submission of the proposed amendment to the city council, then the applicant shall be required to re-petition for a zoning change.
- f. *Appeal by petition to the city council.* Following disapproval of a proposed amendment by the planning commission, the petitioner may appeal such

disapproval to the city council, provided that the petitioner states specifically in writing to the city clerk why the petitioner considers the planning commission's findings and decisions to be in error. Such appeal shall be filed with the city clerk within fifteen (15) days from the date of the planning commission action along with an affidavit stating that adjacent property owners have been notified of the appeal to the city council. The appeal will be placed on the city council agenda no later than the second meeting following the filing of the appeal. The petitioner shall be present at the meeting for the matter to be considered. If the petitioner is unable to attend, written authorization from the petitioner authorizing representation must be presented to the council for the matter to be considered. The city council may approve the proposed amendment only by majority vote of all the members.

9. *Re-petitions for amendment.* No zoning amendment for a specific zone change which was denied shall be resubmitted within twelve (12) months from the date of final disapproval of a proposed amendment unless there is evidence submitted to the planning commission which justifies reconsideration.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING A MASTER LEASE AGREEMENT WITH VERIZON WIRELESS**

**WHEREAS**, Verizon Wireless desires to improve their cell phone capability in Springdale, and

**WHEREAS**, Verizon Wireless wants to explore the possibility of locating equipment on property owned by the City of Springdale, and

**WHEREAS**, Verizon Wireless has requested permission to install equipment and work in public rights-of-way;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the Mayor is hereby authorized to execute a master lease agreement with Verizon Wireless Tennessee Partnership.

**PASSED AND APPROVED** this 11<sup>th</sup> day of March, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

## MASTER LEASE AGREEMENT

This Master Lease Agreement (the "Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the City of Springdale, Arkansas, with its principal offices located at \_\_\_\_\_, hereinafter designated LESSOR and Verizon Wireless Tennessee Partnership d/b/a Verizon Wireless, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated LESSEE. LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

### WITNESSETH

WHEREAS, LESSOR is the owner of or holds a leasehold interest in certain buildings, utility poles and/or other improvements and/or facilities, which are located within the geographic area of a license to provide wireless services licensed by the Federal Communications Commission ("FCC") to LESSEE; and

WHEREAS, LESSEE desires to install, maintain and operate communications equipment in and/or upon certain of LESSOR's buildings, utility poles and/or other improvements and/or facilities, some of which may be located in the public rights-of-way; and

WHEREAS, LESSOR and LESSEE desire to enter into this Agreement to define the general terms and conditions which would govern their relationship with respect to particular sites at which LESSOR may wish to permit LESSEE to install, maintain and operate communications equipment as hereinafter set forth; and

WHEREAS, LESSOR and LESSEE acknowledge that they will enter into a lease supplement ("Supplement"), a copy of which is attached hereto as Exhibit A, with respect to any particular location or site which the Parties agree to lease; and

WHEREAS, the Parties acknowledge that different related entities may operate or conduct the business of LESSOR and LESSEE in different geographic areas and as a result, each Supplement may be signed by LESSEE and LESSOR's affiliated entities as further described herein, as appropriate based upon the ownership or other interest in of the subject building or facility, in the case of LESSOR, and the entity holding the FCC license in the subject geographic location, in the case of LESSEE.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **PREMISES.** Pursuant to all of the terms and conditions of this Agreement and the applicable Supplement, LESSOR agrees to lease to LESSEE certain space described in the applicable Supplement (the real property to which LESSOR has an interest to be subject to the applicable Supplement is hereinafter sometimes collectively referred to as the "Property"), for the installation, operation and maintenance of communications equipment; together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over the Property to and from the Premises (as hereinafter defined) for the purpose of installation, operation and maintenance of LESSEE's communications facility, along with the right to use the public rights-of-

way as described in Paragraph 26 below. The space leased by LESSOR to LESSEE described in the applicable Supplement to be executed by the Parties is hereinafter collectively referred to as the "Premises". In the event there are not sufficient electric and telephone, cable or fiber utility sources located on the Property, LESSOR agrees to grant LESSEE or the local utility provider the right to install such utilities on, over and/or under the Property necessary for LESSEE to operate its communications facility, provided the location of such utilities shall be as reasonably designated by LESSOR.

2. CONDITION OF PROPERTY. In the event LESSOR leases to LESSEE any space within or on any building of any Property (the "Building"), LESSOR shall deliver the Premises to LESSEE in a condition ready for LESSEE's construction of its improvements and clean and free of debris. In the event LESSOR leases to LESSEE any space within or on a Building, LESSOR represents and warrants to LESSEE that as of the Effective Date of each Supplement and continuing throughout the Term of each Supplement (as hereinafter defined): (a) the Building (including without limitation the roof, foundations, exterior walls, interior load bearing walls, and utility systems) is (i) in good condition, structurally sound, and free of any leakage; and (ii) the Property and Building are in compliance with all Laws (as defined in Paragraph 23 below), including any applicable building codes, regulations, or ordinances which may exist with regard to the Building, or any part thereof; and (b) the Property is free of all lead-based paint, asbestos or other hazardous substances, as such term may be defined under any applicable federal, state or local law. If a breach of the representations and warranties contained in this Paragraph 2 with respect to the Premises is discovered at any time during the Term of a particular Supplement, LESSOR shall, promptly after receipt of written notice from LESSEE setting forth a description of such non-compliance, rectify same at LESSOR's expense.

3. TERM; RENTAL.

This Agreement shall be for a term of twenty-five (25) years commencing upon the execution hereof by both Parties. Each Supplement shall be effective as of the date of execution by both Parties (the "Effective Date"), provided, however, the initial term of each Supplement shall be for five (5) years and shall commence on the first day of the month following the day that LESSEE commences installation of the equipment on the Premises (the "Commencement Date") at which time rental payments shall commence and be due at a total annual rental of \$2,000.00 to be paid in advance annually on the Commencement Date and on each anniversary of it in advance, to the payee designated by LESSOR in the Supplement or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 17 below. LESSOR and LESSEE acknowledge and agree that the initial rental payment for each Supplement shall not actually be sent by LESSEE until thirty (30) days after the Commencement Date. LESSOR and LESSEE agree that they shall acknowledge in writing the Commencement Date of each Supplement.

Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

LESSOR hereby agrees to provide to LESSEE certain documentation (the "Rental Documentation") including without limitation: (i) documentation evidencing LESSOR's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits under each Supplement; (ii) a completed Internal Revenue Service Form W-9, or equivalent for any party to whom rental payments are to be made pursuant to this Agreement or a Supplement; and (iii)

other documentation requested by LESSEE and within fifteen (15) days of obtaining an interest in any Property, Supplement or this Agreement, any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall provide to LESSEE such Rental Documentation. All documentation shall be acceptable to LESSEE in LESSEE's reasonable discretion. Delivery of Rental Documentation to LESSEE shall be a prerequisite for the payment of any rent by LESSEE and notwithstanding anything to the contrary herein or in any Supplement, LESSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LESSEE as provided herein.

4. **ELECTRICAL.** LESSOR shall, at all times during the Term of each Supplement, provide electrical service and telephone service access within the Premises. In consideration for electrical service, the amount of \$300.00 shall be added to the annual rent due under each Supplement as additional rent; provided, however, in the event the Supplement reflects that Tenant will supply its own electrical service to the Premises, such amount shall not be added to the annual rent due under such Supplement.

LESSEE shall be permitted at any time during the Term of each Supplement, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LESSOR. After obtaining approval from LESSOR, LESSEE shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

5. **EXTENSIONS.** Each Supplement shall automatically be extended for four (4) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least three (3) months prior to the end of the then current term. The initial term and all extensions under a Supplement shall be collectively referred to herein as the "Term". Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining Supplements in effect until their expiration or termination. Annual rental for each five (5) year extension term of each Supplement shall be equal to 110% of the annual rental payable with respect to the immediately preceding five (5) year term of such Supplement.

6. **USE; GOVERNMENTAL APPROVALS.** LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. LESSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached to a Supplement, during the Term. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of each Supplement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as a satisfactory building or utility pole structural analysis which will permit LESSEE use of the Premises as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LESSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; and (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner, LESSEE shall have the right to terminate the applicable

Supplement. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in accordance with the notice provisions set forth in Paragraph 17 and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, the applicable Supplement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other thereunder. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR for the terminated Supplement.

7. **INDEMNIFICATION.** Subject to Paragraph 8 below and to the extent allowed by applicable law, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents. Nothing herein shall constitute a waiver of LESSOR's sovereign immunity pursuant to Ark. Code Ann. § 21-9-301.

8. **INSURANCE.** To the extent allowed by applicable law, the Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

9. **INTENTIONALLY DELETED.**

10. **ANNUAL TERMINATION.** Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate each Supplement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to LESSOR.

11. **INTERFERENCE.** LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate a Supplement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue. LESSOR agrees that LESSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this

Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

12. **REMOVAL AT END OF TERM.** LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of a Supplement, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes LESSEE to remain on the Premises after termination of the Supplement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro rata basis if based upon a longer payment term, until such time as the removal of the antenna structure, fixtures and all personal property are completed.

13. **RIGHT OF FIRST REFUSAL (COMMUNICATIONS EASEMENT).** If LESSOR elects, during the Term of any Supplement to grant to a third party by easement or other legal instrument an interest in and to that portion of the Building and or Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of the Supplement to such third party, LESSEE shall have the right of first refusal to meet any bona fide offer of transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.

14. **RIGHTS UPON SALE.** Should LESSOR, at any time during the Term of any Supplement decide (i) to sell or transfer all or any part of the Property or the Building thereon to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Building and or Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to the Supplement and any such purchaser or transferee shall recognize LESSEE's rights hereunder and under the terms of the Supplement. In the event that LESSOR completes any such sale, transfer, or grant described in this paragraph without executing an assignment of the Supplement whereby the third party agrees in writing to assume all obligations of LESSOR under the Supplement, then LESSOR shall not be released from its obligations to LESSEE under the Supplement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of the Supplement.

15. **QUIET ENJOYMENT AND REPRESENTATIONS.** LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein and in a Supplement, shall peaceably and quietly have, hold and enjoy the Premises. LESSOR represents and warrants to LESSEE as of the execution date of each Supplement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute the Supplement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.

16. **ASSIGNMENT.** This Agreement and each Supplement under it may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement and each Supplement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

17. **NOTICES.** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR:           The City of Springdale, Arkansas

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

LESSEE:           Verizon Wireless Tennessee Partnership  
                      d/b/a Verizon Wireless  
                      180 Washington Valley Road  
                      Bedminster, New Jersey 07921  
                      Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

18. **RECORDING.** To the extent the Premises is not located within a public right-of-way or on an existing utility pole, LESSOR agrees to execute a Memorandum of each Supplement which LESSEE may record with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

19. **DEFAULT.** In the event there is a breach by a Party with respect to any of the provisions of this Agreement or its obligations under it, the non-breaching Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have thirty (30) days in which to cure any breach, provided the breaching Party shall have such extended period as may be required beyond the thirty (30) days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The non-breaching Party may not maintain any action or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this

Agreement if LESSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE's ability to conduct its business in the Building; provided, however, that if the nature of LESSOR's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

20. **REMEDIES.** In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the applicable Supplement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. If LESSEE undertakes any such performance on LESSOR's behalf and LESSOR does not pay LESSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, LESSEE may offset the full undisputed amount due against all fees due and owing to LESSOR under the applicable Supplement until the full undisputed amount is fully reimbursed to LESSEE.

21. **ENVIRONMENTAL.** LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Building or Property, unless such conditions or concerns are caused by the specific activities of LESSEE in the Premises.

22. **CASUALTY.** In the event of damage by fire or other casualty to the Building or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate the Supplement upon fifteen (15) days prior written notice to LESSOR. Any such notice of termination shall cause the Supplement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Supplement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Supplement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.

23. **APPLICABLE LAWS.** LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws") relating solely to

LESSEE's specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises. It shall be LESSOR's obligation to comply with all Laws relating to the Property in general, without regard to specific use (including, without limitation, modifications required to enable LESSEE to obtain all necessary building permits).

24. **AUTHORIZED ENTITIES.** This Agreement is entered into by the Parties each on its own behalf and for the benefit of: (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. Each Party and each of the entities described above are referred to herein as an "Authorized Entity". No obligation is incurred or liability accepted by any Authorized Entity until that Authorized Entity enters into a site specific Supplement. Only the Party and the Authorized Entity executing a Supplement are responsible for the obligations and liabilities related thereto arising under that Supplement and this Agreement. All communications and invoices relating to a Supplement must be directed to the Authorized Entity signing the Supplement. A default by any Authorized Entity will not constitute or serve as a basis for a default by any other Authorized Entity not a party to the applicable Supplement.

25. **MISCELLANEOUS.** This Agreement and the Supplements that may be executed from time to time hereunder contain all agreements, promises and understandings between the LESSOR and the LESSEE regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the LESSOR or the LESSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. The performance of this Agreement via each Supplement shall be governed interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law rules.

26. **USE OF PUBLIC RIGHTS-OF-WAY.**

a. LESSOR hereby grants to LESSEE the right to use the municipal public right-of-way for the installation, maintenance and operation of LESSEE's communications equipment in and/or upon utility poles and/or other improvements and/or facilities owned by LESSOR or by third parties and located within said public right-of-way. LESSOR agrees that the annual rental as described in Paragraph 3 above includes any fee or rent associated with LESSEE's use of the public rights-of-way, and in no event shall LESSEE be obligated to pay LESSOR any other rent or fee in connection with such use of any of the public rights-of-way.

b. All communications equipment shall be installed in accordance with applicable Federal, State, and City regulations and, in the absence of such regulations, in accordance with accepted industry practice. LESSEE shall comply with all laws, ordinances, rules and regulations adopted by the City Council of LESSOR with respect to all communications equipment installed in any public right-of-way. Within the public rights-of-way, the location of the communications equipment shall be subject to the reasonable and proper regulation, direction and control of the LESSOR or the official to whom such duties have been delegated by LESSOR. Notwithstanding the foregoing, should any ordinances, rules or regulations adopted by LESSOR be unduly burdensome in LESSEE's sole judgment, LESSEE may terminate

this Agreement or any Supplement or Supplements under the Agreement, without penalty, upon written notice to LESSOR.

c. LESSEE and its contractors shall give LESSOR reasonable notice of the dates, location, and nature of all work to be performed on its communications equipment within the public rights-of-way. This Agreement shall allow LESSEE to perform all work on LESSEE's communications equipment within the public rights-of-way and to park vehicles in the streets and other public rights-of-way when necessary for the installation, replacement, abandonment, operation or maintenance of LESSEE's communications equipment; provided however, any installation of fiber for any LESSEE communication facility located in a public right-of-way shall be performed by a third party provider with the right to install fiber within the given public right-of-way. LESSEE shall not be required to pay any fee in order to perform work on LESSEE's communications equipment, or park within the streets and other public rights-of-way. Following completion of work in the public rights-of-way, LESSEE shall repair any affected public rights-of-way as soon as possible, but no later than the time frame established by the permit issued by the LESSOR. No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work authorized by this Agreement.

[The Remainder of this Page is Intentionally Left Blank; Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**LESSOR:**

**The City of Springdale, Arkansas**

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

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

**LESSEE:**

**Verizon Wireless Tennessee Partnership d/b/a  
Verizon Wireless**

By: **Celco Partnership,  
its General Partner**

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

**Aparna Khurjekar  
Area Vice President Network**

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

**EXHIBIT "A"**

**LEASE SUPPLEMENT**

This Lease Supplement ("Supplement"), is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the **CITY OF SPRINGDALE, ARKANSAS**, whose principal place of business is <Address>, City, State, ("Lessor"), and **VERIZON WIRELESS TENNESSEE PARTNERSHIP** d/b/a Verizon Wireless, whose principal place of business is One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("Lessee").

1. **Master Lease Agreement.** This Supplement is a Supplement as referenced in that certain Master Lease Agreement between the City of Springdale, Arkansas and Verizon Wireless Tennessee Partnership d/b/a Verizon Wireless, dated \_\_\_\_\_, 201\_\_, (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. **Premises.** Lessor hereby leases to Lessee that certain premises on Lessor's Property located at INSERT SITE ADDRESS as shown on Exhibit "1" attached hereto and made a part hereof.
3. **Term.** The Commencement Date and the Term of this Supplement shall be as set forth in the Agreement.
4. **Consideration.** Rent under this Supplement shall be as set forth in the Agreement, payable to the City of Springdale, Arkansas at \_\_\_\_\_.
5. **Site Specific Terms.** (Include any site-specific terms)

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seal the day and year first above written.

**LESSOR:**

**The City of Springdale, Arkansas**

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

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

**LESSEE:**

**Verizon Wireless Tennessee Partnership d/b/a  
Verizon Wireless**

By: **Cellco Partnership,  
its General Partner**

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

**Aparna Khurjekar  
Area Vice President Network**

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

**EXHIBIT 1**  
**PREMISES**

## What is a Floating Wetland Island?

A Floating Wetland Island is a man-made ecosystem, that mimics naturally occurring wetlands. These floating wetlands are constructed using native, perennial aquatic plants suspended in floating rafts and they mimic the same basic function as natural wetlands.

Natural wetlands are known for their ability to improve water quality. This is a result of the wetland plants processing excess nutrients, intercepting other pollutants, trapping sediment and reducing suspended solids in the water. In the case of floating wetlands, the plants' roots are always exposed to the water, which enables them to constantly improve the things that degrade water quality.

**Floating Island Pollutant Removal Rates**

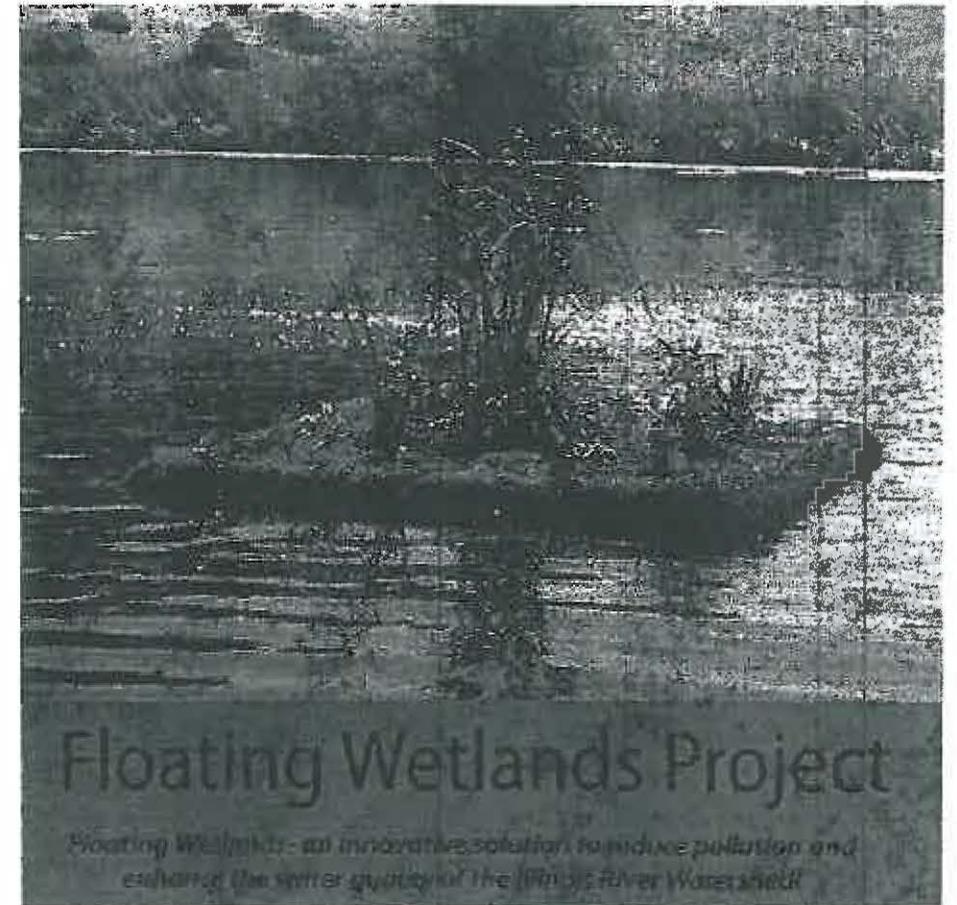
Pollutant	Daily Rates mg/f <sup>2</sup> /day	Annual Rates g/f <sup>2</sup> /year
Nitrate (NO <sub>3</sub> <sup>-</sup> )	21	7.67
Total Nitrogen (TN)	28.7	10.45
Ammonia (NH <sub>3</sub> )	25.8	9.42
Total Phosphorus (TP)	1.9	0.69
Dissolved Phosphate (PO <sub>4</sub> <sup>3-</sup> )	1.5	0.55
Copper (Cu)	0.25	0.09
Zinc (Zn)	2.3	0.84
Fine Particulates (FP)	2.1	0.77

Source: National Institute of Water & Atmospheric (NIWA) Research Study



### The "Botanic"

Prairie Grove Middle School EAST submitted their floating wetland project, the "Botanic," to the National EAST Conference, 2013.



Find out more! [www.irwp.org](http://www.irwp.org) [contact@irwp.org](mailto:contact@irwp.org) 479-238-4671

### Materials:

For the frame:

- 3 4" x 10' PVC pipe: Hardware store
- 4 4" PVC 90 degree elbows: Hardware store
- PVC cleaner and cement: Hardware store

For the body:

- 1 48" x 10' piece black plastic netting (Industrial Netting #XB 1133 Black PE 1-1/4" opening or similar), from Industrial Netting
- 1 39" (1 meter) x 10' piece erosion control mesh (Enkamat #7020 or similar)
- 1 mattress coir fiber bale (18 lbs.), from RoLanka
- 1 39" (1 meter) x 20' piece BioD 90 erosion control mat, from RoLanka
- UV-protected cable ties (18")
- Cord, preferably UV-stabilized (or other cord, or baling twine)

*Note: Watertightness of the PVC frame is what keeps the raft afloat; work carefully in making the pipe connections to insure a good seal. Make sure edges are clean, use a cleaner or primer first, follow directions on cement packaging.*

### Instructions:

- (1) Cut one of the PVC pipes into two (2) 37" long pieces.
- (2) Cut 3" from each of the two remaining 10' pipes to create two 117" pieces.
- (3) Assemble the PVC pieces to create a water-tight frame. Follow the instructions on the PVC cement. Apply a clear PVC cleaner or primer and then PVC cement to each joint. (Suggestion: Use a clear primer and cement unless you want purple splotches on your raft.)
- (4) Attach the black plastic netting to the frame with UV-protected cable ties.
- (5) Lay the Enkamat mesh on top of the netting.
- (6) Lay the first 10' of the coir erosion control mat over the Enkamat; let the additional 10' hand off one end.
- (7) Shred the coir (coconut fiber) bale and place on top of the erosion control mat.
- (8) Fold the rest of the erosion control fabric over the first (you are making a mattress with shredded coir between two layers of mat.)
- (9) Sew the edges of the coir mattress together and to the netting & mesh layers at the same time.



Rose Mallow



Water Willow



Swamp Milkweed, *Asclepias incarnate*



Soft Rush, *Juncus effusus*

### Native Wetland Plants

- Bog lily, *Crinum americanum*
- Blueflag Iris, *Iris virginica*
- Button Bush, *Cephalanthus occidentalis*
- Cardinal Flower, *Lobelia cardinalis*
- Duck Potato, *Sagittaria lancifolia*
- Fox Sedge, *Carex vulpinoides*
- Lizard Tail, *Saururus cernuus*
- Pennywort
- Pickereel weed, *Pontederia cordata*
- Powdery thalia, *Thalia dealbata*
- Riparian sedge, *Carex riparia*
- Swamp Dogwood, *Cornus amomum*
- Swamp Iris, *Iris versicolor*
- Typha latifolia, *Cattails*
- Water Parsnip, *Sium suave*



Cardinal Flower

# Floating Wetlands

Springdale High School  
E.A.S.T.

## What is a Floating Wetland?

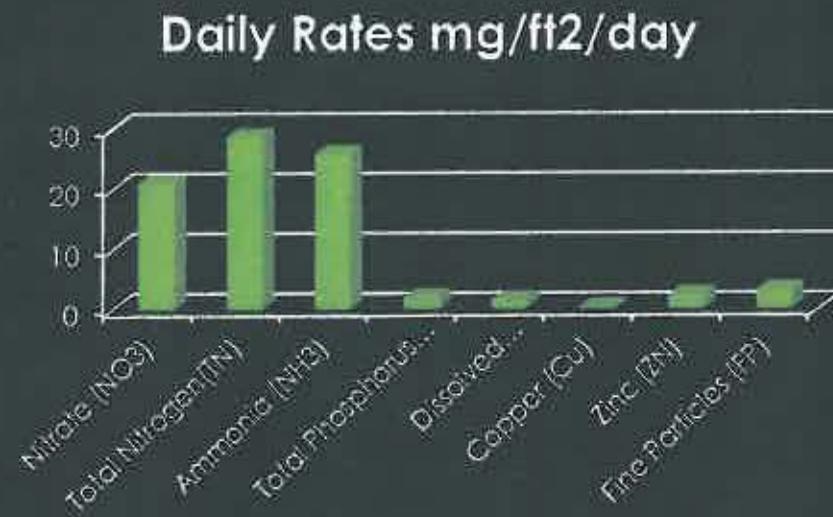
- A floating wetland is a man made ecosystem, that mimics naturally occurring wetlands. These floating wetlands are constructed using native, perennial aquatic plants suspended in floating rafts.



## What are the benefits of a Floating Wetland?

- Filters pollutants
- Nurturing habitat
  - Fish
  - Water fowl
  - Other aquatic organisms
- Reduces Nitrogen and Phosphorus levels
  - 32% removal of phosphorus
  - 45% reduction of nitrogen
- Habitat Restoration
- Carbon Sequestration

# Charts



# Ideal Location

- o Lake Springdale!



# Springdale Fire Department

March 3, 2014

Mayor Doug Sprouse;

The Fire Department would like to be considered to add two positions for "on-call pay" within our organization. The positions would be for our Fire Marshal, and then a back-up B/C. Both of these positions are currently being filled, however, they receive no compensation unless they are called in in which they obtain overtime. They get nothing for being on call for 24/7.

The Fire Marshal position is currently the position that fills our role for fire investigation 24/7. Our current Fire Marshal Duane Miller is basically on call 24/7 to respond to fires that are deemed necessary to conduct a fire investigation. B/C Miller does not get any relief unless he is gone out of town. In those instances, we ask our Asst. Fire Marshal Pat Lee to fill in the "on-call" position. We have one of those individuals on call 24/7, 365 days a year. This would equate to a total expenditure for this position for on-call pay to be \$5,475 per year.

The other position for "on-call" pay being recommended is a back-up B/C position. Currently we run a one B/C model and if that B/C happens to be on a fire, he not only has to handle the fire, but all of the other issues within the city. We have had several incidents that have left the city inadequately covered. The addition of an on-call B/C would allow the on-duty B/C to focus on the task at hand, while allowing another B/C to cover the city and ensure that we have adequate resources within our city limits should another call come in. This will not only increase the citizens' safety, but the firefighters' safety as well. The coverage is usually supplied by myself, Asst. Chief McDonald, or Division Chief Vaughan who fill that role. This would allow us to define that position and allow everyone to know who that coverage is going to come from. If we staffed this on-call position, it too would require 24/7, 365 days a year coverage for a total amount of \$5,475.

The total on-call pay being requested from the fire department for these two on-call positions is a total of \$10,950. Thank you for your consideration into this matter and I look forward to answering any questions you may have.

Mike Irwin  
Fire Chief



The Springdale Fire Department exists to enhance the quality of life in Springdale by minimizing the devastating effects of fires, medical emergencies, and natural and artificial disasters.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AMENDING SECTION 4.10 OF THE  
PERSONNEL AND PROCEDURES MANUAL FOR  
THE CITY OF SPRINGDALE, ARKANSAS**

**WHEREAS**, on January 14, 2014, the City Council for the City of Springdale, Arkansas, adopted a resolution amending Section 4.10 of the Personnel and Procedures Manual for the City of Springdale, Arkansas, to create "On-Call" pay for certain employees;

**WHEREAS**, certain employees of the Springdale Fire Department should be included in the list of employees entitled to "On-Call" pay pursuant to Section 4.10 of the Personnel and Procedures Manual for the City of Springdale, Arkansas;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that:**

**Section 1:** Section 4.10 of the Personnel and Procedures Manual for the City of Springdale, Arkansas is hereby amended to read as follows:

**4.10 Additional Compensation for Certain Employees:**

In addition to regular pay, including any holiday compensation, certified full-time paramedics, of the Springdale Fire Department shall receive an additional salary compensation, to be determined by the City Council. Those full time firefighters who are members of HAZMAT shall receive additional compensation in an amount to be determined by the City Council.

Police officers who have attained any certificate, except the Basic Certificate, under the Arkansas Commission on Law Enforcement Standards, shall receive an additional compensation each month for each certificate earned above the "Basic Certificate," and said compensation amount shall be set by the City Council.

Animal Control Officers, employees of the Information Technology Department, employees of the Public Works Signalization Division, ~~and~~, designated employees of the Police Department entitled to "On-Call" compensation shall be: 1) Criminal Investigation Division Sergeant; 2) Criminal Investigation Division Detective; 3) In-House Narcotics Detective; 4) Drug Enforcement Agency Detective; and 5) 4<sup>th</sup> Judicial Drug Task Force Detective. The designated employees of the Fire Department entitled to "On-Call" compensation shall be: 1) Fire Marshal or Acting Fire Marshal; and 2) Back-up Response Battalion Chief.

All additional pay set out in this policy is paid bi-weekly, and such compensation is set out on the employee's paycheck.

**Section 2:** All other provisions of Section 4 not specifically modified herein shall remain in full force and effect.

**PASSED AND APPROVED**, this \_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

**Springdale Fire Department  
Policy & Procedures Manual  
Volume 1 – Administration  
Section 102 – Personnel Policy  
102.3 – On-Call Pay**

It is the policy of the Springdale Fire Department to provide additional compensation to designated employees, who are required to serve in on-call status.

On-call is compensation for an employee who must remain available to be called back to work on short notice if the need arises. These on-call positions are for personnel to respond to work on short notice to an emergency or work situation in order:

- To avoid significant service disruption
- To avoid placing employees or the public in unsafe situations; or
- To protect and/ or provide emergency services to property; or equipment; or
- To respond to investigate an emergency scene based on Springdale Fire Department policies on investigations.

The two positions for on-call pay shall be the position of Fire Marshal and an On-Call (back-up) Battalion Chief.

**Fire Marshal:**

This position shall be filled by a certified department investigator and shall be filled on a 24/7 basis. Normally this position shall be filled by the Battalion Chief of Prevention, however, when unavailable, it will be filled by qualified candidates within the department.

The individual shall respond if called to Station 1 to pick-up needed equipment and respond to the scene to conduct the necessary investigation.

The individual shall have a response time to station 1 not to exceed 45 minutes.

The individual shall be held to all requirements of the Springdale Fire Department reporting for duty policies.

**On-Call Battalion Chief:**

This position shall be filled by a certified Battalion Chief or Acting Battalion Chief in the Springdale Fire Department. This position shall be filled on a 24/7 basis. Normally this position shall be filled by a Battalion Chief, however, when unavailable, it will be filled by a qualified Acting Battalion Chief as specific in the Springdale Fire Department Policies.

The individual shall respond to Station 1 to pick up a response vehicle if not provided with a home storage unit. If a home storage unit is provided, they can listen from home and respond if needed.

The individual shall have a response time to become available for call within 15 minutes.

The individual shall be held to all requirements of the Springdale Fire Department reporting for duty policies.

The on-call rate shall be paid as a \$15.00 per day rate and shall be paid on the individuals normal pay check showing as on-call pay. If a person is called back to duty while on on-call status, each person shall receive their pay at the overtime rate of 1 1/2 time the normal rate of pay if they have exceeded the normal work hours.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION ADOPTING THE CITY OF SPRINGDALE,  
ARKANSAS, EMERGENCY OPERATIONS PLAN FOR THE  
CITY COUNCIL AND THE CITY OF SPRINGDALE.**

**WHEREAS**, a city emergency operations plan is needed to guide the city in the event of a disaster, and to ensure that the City of Springdale has clear directions and guidance for all of the city;

**WHEREAS**, the fire department along with city staff has conducted training and collaboration in developing this plan based on current local, state, and federal guidelines and;

**WHEREAS**, city has identified types of disasters common to this region and has molded the plan to be incorporated into the county plan as well as the state plan and;

**WHEREAS**, the City Council will utilize this plan for direction as well as measuring success in the event of a disaster;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that City Council expresses its support for the City of Springdale Emergency Operations Plan.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

**ATTEST:**

\_\_\_\_\_  
Denise Pearce, City Clerk

**APPROVED:**

\_\_\_\_\_  
Ernest B. Cate, City Attorney

# Springdale Fire Department

March 3, 2014

Mayor Doug Sprouse;  
Councilman Eric Ford;

We have been in recent discussions in the Northwest Arkansas Metro Chiefs about becoming truly a regional concept in Northwest Arkansas. With that, as we continue to see joint efforts in Haz-Mat, Urban Search and Rescue (USAR), and a renewed effort to work together, automatic aid has began to surface as a true possibility.

We currently have an automatic aid agreement with Fayetteville for a certain area of their city, as well as they have a certain area in our city. It works well, and basically what it means is that one of their fire apparatus is assigned as a responder to that area, just as we are. This was in place before my arrival, and in discussing with the senior staff, little if any problems have arisen with this agreement, and it does seem to be pretty equitable as far as responses.

The reason for the letter is that Lowell and Springdale Fire Departments have been in recent discussions about automatic aid, and as we both see our call volumes increase, we think we can offer some help and relief to each other. They are wanting us to enter into an automatic aid agreement with them for their city limits north to Monroe Avenue on structure fires, and we are looking at adding them to our response area to 264 highway. The reason for the letter is that currently this is a mutual aid agreement and this will eliminate a step required in calling for the assistance, but will automatically assign the help to those agreed upon areas. This can also be looked at with Tonitown as well as Cave Springs, which may help our ISO ratings as well. If you have automatic aid agreements, they can help ISO ratings, however if it is only mutual aid agreements is does not help.

This is something that our council would have to approve, so I wanted to discuss it with both of you prior to asking it to be placed on any committee agenda. Thank you and please let me know your feelings on this subject. We believe that the number of calls would be fairly equal between both entities, and therefore, and true help for both departments and cities.

Mike Irwin  
Fire Chief  
Springdale Fire  
Department



The Springdale Fire Department exists to enhance the quality of life in Springdale by minimizing the devastating effects of fires, medical emergencies, and natural and artificial disasters.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT FOR AUTOMATIC MUTUAL AID BETWEEN THE SPRINGDALE FIRE DEPARTMENT AND THE LOWELL FIRE DEPARTMENT.**

WHEREAS, the City of Springdale and the City of Lowell both staff and maintain fire stations for the safety and protection of the lives and property within their respective jurisdictions; and

WHEREAS, the City of Springdale and the City of Lowell, in order to provide the maximum protection by providing the fastest service response to its residents, desire to enter into an agreement whereby each entity may render automatic mutual aid to each other for certain defined incidents; and

WHEREAS, the City of Springdale and the City of Lowell wish to enter into an agreement to memorialize their agreement to provide automatic mutual aid, and to set forth the terms and conditions of providing mutual aid;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor and City Clerk are hereby authorized to execute an Agreement for Automatic Mutual Aid, a copy of which is attached to this Resolution.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, CITY ATTORNEY

ErnestCa/2014Misc/RESOmutualaid

**AGREEMENT FOR AUTOMATIC MUTUAL AID  
BETWEEN  
SPRINGDALE FIRE DEPARTMENT  
AND  
LOWELL FIRE DEPARTMENT**

THIS AGREEMENT is made and entered into this 1 of \_\_\_\_\_, 2014, by and between SPRINGDALE FIRE DEPARTMENT, a municipal corporation, hereafter referred to as SPRINGDALE, and the LOWELL FIRE DEPARTMENT, a municipal corporation, hereafter referred to as LOWELL

**WITNESSETH:**

**WHEREAS**, SPRINGDALE and LOWELL both staff and maintain fire stations for the safety and protection of the lives and property within their respective jurisdictions; and

**WHEREAS**, SPRINGDALE and LOWELL in order to provide the maximum protection by providing the fastest service response to its residents, desire to enter into an agreement whereby each entity may render automatic mutual aid to each other for certain defined incidents; and

**WHEREAS**, each entity is required to have a minimum of four (4) safety equipped firefighters on the scene of an incident prior to making an interior attack or entering into an environment that is an immediately dangerous to health and life (IDHL); and

**WHEREAS**, each has the ability to provide mutual aid when not committed to another emergency;

**NOW, THEREFORE**, pursuant to the authority granted by the State of Arkansas under Interlocal Cooperation Act, A.C.A. § 25-20-101 et seq. (Repl. 2002 and Supp. 2007) the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

1. **DEFINITIONS**. For purposes of this Agreement, the following terms shall have those meanings as set forth herein:

a.) Automatic mutual aid as used in this Agreement shall mean the automatic response of the closest identified available resource via emergency dispatch center request to an adjacent fire jurisdiction regardless of jurisdictional boundaries.

b.) The term incident(s) as used in this Agreement are limited to an incident specifically identified and set forth in Exhibit A, attached hereto, and incorporated herein by this reference.

2. **AUTOMATIC MUTUAL AID AREA**: SPRINGDALE and LOWELL agree to provide automatic mutual aid to each other within that geographical area, hereafter

referred to as area, identified in Exhibit A, attached hereto, and incorporated herein by this reference.

3. **RESPONSE REQUIREMENTS:** Upon receipt of an emergency call, SPRINGDALE and LOWELL, if available, shall respond one (1) engine company (minimum type two engine) with a minimum of three (3) personnel that have been trained to a minimum of FFI, FFII, Haz-Mat awareness and Operations, and EMT into the area. When responding, each agency shall insure that:

a.) All personal protective clothing and equipment shall be used by all participating firefighters on the scene of a fire or emergency incident.

b.) The command and tactical frequency assigned by Command shall be utilized on an incident; and,

c.) The unit first arriving at the scene shall assume command of the incident until relieved by an equal or superior officer of the agency having jurisdiction.

d.) The agency first arriving may cancel any further response to the incident if that agency is capable of handling the incident and the responsible jurisdiction duty officer is so notified.

4. **TRAINING:** SPRINGDALE and LOWELL shall minimally train together quarterly on Standard Operating Procedures which apply to each organization. Standard Operating Procedures and the Incident Command System shall be utilized on all incidents.

5. **HOLD HARMLESS:** Both SPRINGDALE and LOWELL agree to indemnify and hold each other free and harmless from any and all claims, liability, loss, damage or expenses from liability for acts or omissions of the other, its officers, employees, and agents in connection with the performance of this agreement.

6. **DURATION; TERMINATION:** This agreement shall remain in force and effect indefinitely unless terminated by either of the parties provided the other party is given thirty (30) days notice in writing of such termination. This Agreement may be subject to further negotiations in the event either party adds or deletes a fire station or resources.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

\_\_\_\_\_  
Mayor of Springdale

\_\_\_\_\_  
Mayor of Lowell

\_\_\_\_\_  
Springdale Fire Chief

\_\_\_\_\_  
Lowell Fire Chief

ATTEST: APPROVED AS TO FORM:

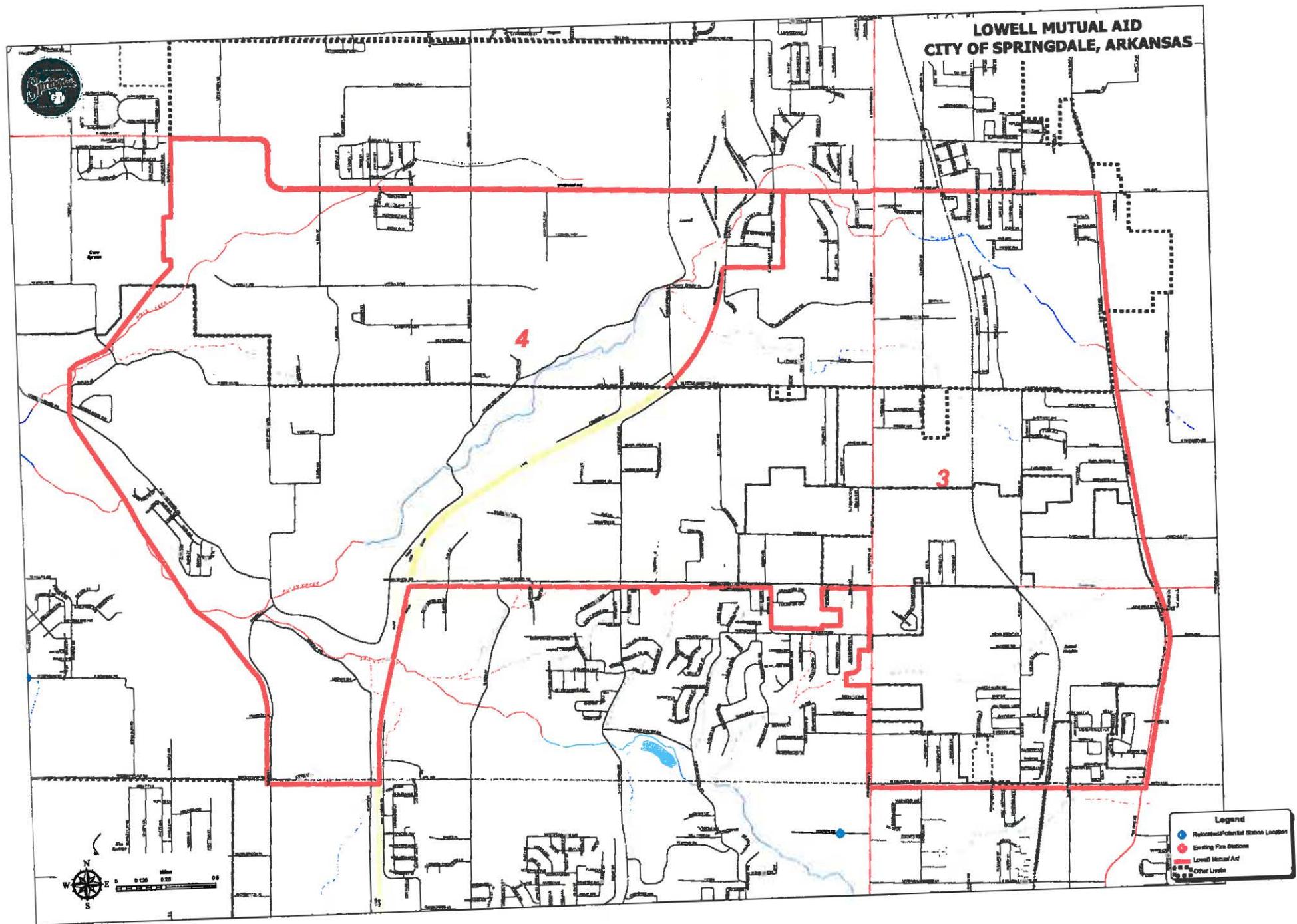
\_\_\_\_\_  
Denise Pearce, Springdale City Clerk

\_\_\_\_\_  
Ernest Cate, Springdale City Attorney

\_\_\_\_\_  
Lowell City Clerk

\_\_\_\_\_  
Lowell City Attorney

**LOWELL MUTUAL AID  
CITY OF SPRINGDALE, ARKANSAS**



**Legend**

- Blue dot: Potential/Possible Station Location
- Red dot: Existing Fire Hydrant
- Red line: Lowell Mutual Aid
- Blue line: Other Utility

**AGREEMENT FOR AUTOMATIC MUTUAL AID  
BETWEEN  
SPRINGDALE FIRE DEPARTMENT  
AND  
LOWELL FIRE DEPARTMENT**

THIS AGREEMENT is made and entered into this 1 of February 2014, by and between SPRINGDALE FIRE DEPARTMENT, a municipal corporation, hereafter referred to as SPRINGDALE, and the LOWELL FIRE DEPARTMENT, a municipal corporation, hereafter referred to as LOWELL

**WITNESSETH**

**WHEREAS**, SPRINGDALE and LOWELL both staff and maintain fire stations for the safety and protection of the lives and property within their respective jurisdictions; and **WHEREAS**, SPRINGDALE and LOWELL in order to provide the maximum protection by providing the fastest service response to its residents, desire to enter into an agreement whereby each entity may render automatic mutual aid to each other for certain defined incidents; and

**WHEREAS**, each entity is required to have a minimum of four (4) safety equipped firefighters on the scene of an incident prior to making an interior attack or entering into an environment that is an immediately dangerous to health and life (IDHL); and

**WHEREAS**, each has the ability to provide mutual aid when not committed to another emergency;

**NOW, THEREFORE**, pursuant to the authority granted by the State of Arkansas under Interlocal Cooperation Act, A.C.A. § 25-20-101 et seq. (Repl. 2002 and Supp. 2007) the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

1. **DEFINITIONS**. For purposes of this Agreement, the following terms shall have those meanings as set forth herein:

a.) Automatic mutual aid as used in this Agreement shall mean the automatic response of the closest identified available resource via emergency dispatch center request to an adjacent fire jurisdiction regardless of jurisdictional boundaries.

b.) The term incident(s) as used in this Agreement are limited to an incident specifically identified and set forth in Exhibit A, attached hereto, and incorporated herein by this reference.

2. **AUTOMATIC MUTUAL AID AREA**: SPRINGDALE and LOWELL agree to provide automatic mutual aid to each other within that geographical area, hereafter referred to as area, identified in Exhibit A, attached hereto, and incorporated herein by this reference.

3. **RESPONSE REQUIREMENTS**: Upon receipt of an emergency call, SPRINGDALE and LOWELL, if available, shall respond one (1) engine company (minimum type two engine) with a

minimum of three (3) personnel that have been trained to a minimum of FFI, FFII, Haz-Mat awareness and Operations, and EMT into the area. When responding, each agency shall insure that:

- a.) All personal protective clothing and equipment shall be used by all participating firefighters on the scene of a fire or emergency incident.
- b.) The command and tactical frequency assigned by Command shall be utilized on an incident; and.
- c.) The unit first arriving at the scene shall assume command of the incident until relieved by an equal or superior officer of the agency having jurisdiction.
- d.) The agency first arriving may cancel any further response to the incident if that agency is capable of handling the incident and the responsible jurisdiction duty officer is so notified.

4. TRAINING: SPRINGDALE and LOWELL shall minimally train together quarterly on Standard Operating Procedures which apply to each organization. Standard Operating Procedures and the Incident Command System shall be utilized on all incidents.

5. HOLD HARMLESS: Both SPRINGDALE and LOWELL agree to indemnify and hold each other free and harmless from any and all claims, liability, loss, damage or expenses from liability for acts or omissions of the other, its officers, employees, and agents in connection with the performance of this agreement.

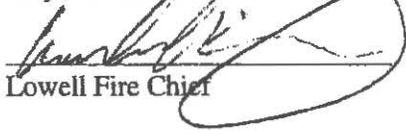
6. DURATION; TERMINATION: This agreement shall remain in force and effect indefinitely unless terminated by either of the parties provided the other party is given thirty (30) days notice in writing of such termination. This Agreement may be subject to further negotiations in the event either party adds or deletes a fire station or resources.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

\_\_\_\_\_  
Mayor of Springdale

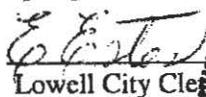
\_\_\_\_\_  
Springdale Fire Chief

  
\_\_\_\_\_  
Mayor of Lowell

  
\_\_\_\_\_  
Lowell Fire Chief

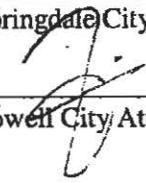
ATTEST: APPROVED AS TO FORM:

\_\_\_\_\_  
Springdale City Clerk

  
\_\_\_\_\_  
Lowell City Clerk



\_\_\_\_\_  
Springdale City Attorney

  
\_\_\_\_\_  
Lowell City Attorney

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT FOR EMERGENCY MEDICAL SERVICES WITH BENTON COUNTY, ARKANSAS.**

WHEREAS, the Springdale Fire Department has historically provided emergency medical services to residents living in certain unincorporated areas of Benton County, Arkansas;

WHEREAS, Ark. Code Ann. §14-266-101, *et seq.*, gives the City of Springdale the authority to enter into agreements to provide emergency medical services; and

WHEREAS, the City of Springdale, Arkansas, and Benton County, Arkansas, wish to enter into an agreement regarding emergency medical services in certain unincorporated areas of Benton County, Arkansas, and regarding the payment to the City of Springdale for providing those services during the calendar year 2014;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor and City Clerk are hereby authorized to execute an Agreement for Emergency Medical Services, a copy of which is attached to this Resolution.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, CITY ATTORNEY

## AGREEMENT FOR EMERGENCY MEDICAL SERVICES

THIS AGREEMENT entered into between Benton County, a political subdivision of the State of Arkansas, and the City of Springdale, Arkansas, a municipal corporation of the State of Arkansas, hereinafter referred to as "CONTRACTOR", pursuant to ACA § 14-266-101, and for and in consideration of the mutual covenants and agreements herein set forth:

1. In exchange for the consideration to be paid by Benton County described herein, CONTRACTOR agrees to provide area coverage for emergency medical services to an area of unincorporated Benton County described in attachment "A." The services to be provided are as follows:

(a) Emergency response by trained personnel to matters reasonably requiring such response, including but not limited to traffic and other accidents, other incidents resulting in injury to persons, and other emergency medical response.

(b) One-way transportation for emergency medical care by advance life support ambulance (as that term is defined under Arkansas law and/or the regulations of the Arkansas Department of Health) to an emergency medical facility.

(c) Emergency care while en route to the emergency medical facility by qualified medical personnel.

2. The services described herein shall be provided by CONTRACTOR during calendar year 2014.

3. The ability of the County to monitor and evaluate the effectiveness of its EMS delivery system is greatly dependent upon the availability of valid data and statistical analysis that measures system performance including both clinical and financial outcomes. The contractor shall provide detailed and periodic reporting as follows:

**A. Operational Reporting Requirements:** The contractor shall provide within 30 days after each quarter, reports detailing its performance during the preceding quarter as it relates to emergency medical services provided pursuant to this agreement. At a minimum the contractor will include the following in its operational quarterly reports:

- Total responses
- Total transports
- Total patients transported
- Total responses and transport activity by ambulance unit
- Total cancelled calls (prior to arrival)
- Total patient refusals
- Distribution of responses by time of day and day of week
- Distribution of incidents by location (ambulance service zones)
- Description of incidents by call type
- Response time summary for all responses

- Response time summary by ambulance service zones
- Response time summary by ambulance unit

**B. Financial Reports:** The contractor shall organize and report its financial records in a manner to facilitate the direct comparisons between dispatch incident numbers and patient account records. The financial records will be provided to the County on a quarterly basis and organized to capture the following as it applies to emergency medical services provided pursuant to this agreement:

- Total expenses and revenues
- Total average charge per patient
- Total average patient charge for mileage
- 30, 60, and 90 day accounts receivable
- Distribution of payments by all payment groups (Medicare, Medicaid, private insurance, direct payment, non-collectables/bad debt)
- Quarterly collection rate (percentage) for all ambulance billings
- Total of uncollected accounts with 180 days of aging

4. In exchange for the services provided hereunder, CONTRACTOR shall be paid by Benton County the sum of \$68,774.37. Said amount shall be paid in quarterly installments upon CONTRACTOR rendering a bill to Benton County reflecting the amount to be due per quarter.

5. CONTRACTOR may also require payment of user fees by individuals receiving the services contemplated hereunder or their insurers as may be allowed by law. CONTRACTOR agrees that it will charge the same amount to persons receiving services under this agreement, and their insurers, if applicable, that it charges to persons receiving similar services within its City limits. Benton County shall have no liability to CONTRACTOR for any user fees it is unable to collect.

6. CONTRACTOR shall be responsible for all expenses of personnel and materials related to carrying out its obligations hereunder. CONTRACTOR shall pay any and all applicable taxes regarding its operations, including specifically taxes related to its employees. CONTRACTOR shall also pay for any required insurance for their employees for workers compensation.

7. CONTRACTOR covenants and agrees to perform the services provided by this agreement to the best of its ability. It may enter into mutual aid agreements with other providers of emergency medical services as it sees fit to carry out this contract in the same manner as the services it provides within its city limits or elsewhere.

8. Either party shall be entitled to terminate this agreement on thirty days written notice.

9. Notwithstanding anything contained in this Agreement for Emergency Medical Services to the contrary, in the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for any payments due under the agreement, including any extensions or renewals thereof, Benton County will notify CONTRACTOR of such occurrence

and the agreement shall terminate on the last day of the fiscal period for which appropriations were received.

10. This agreement is drawn to be effective in and shall be construed in accordance with the laws of the State of Arkansas. No amendment or variation of the terms of this agreement shall be valid unless made in writing and signed by the party to be charged.

WITNESS the hands and seals of the parties as of the \_\_\_\_\_ day of January, 2014.

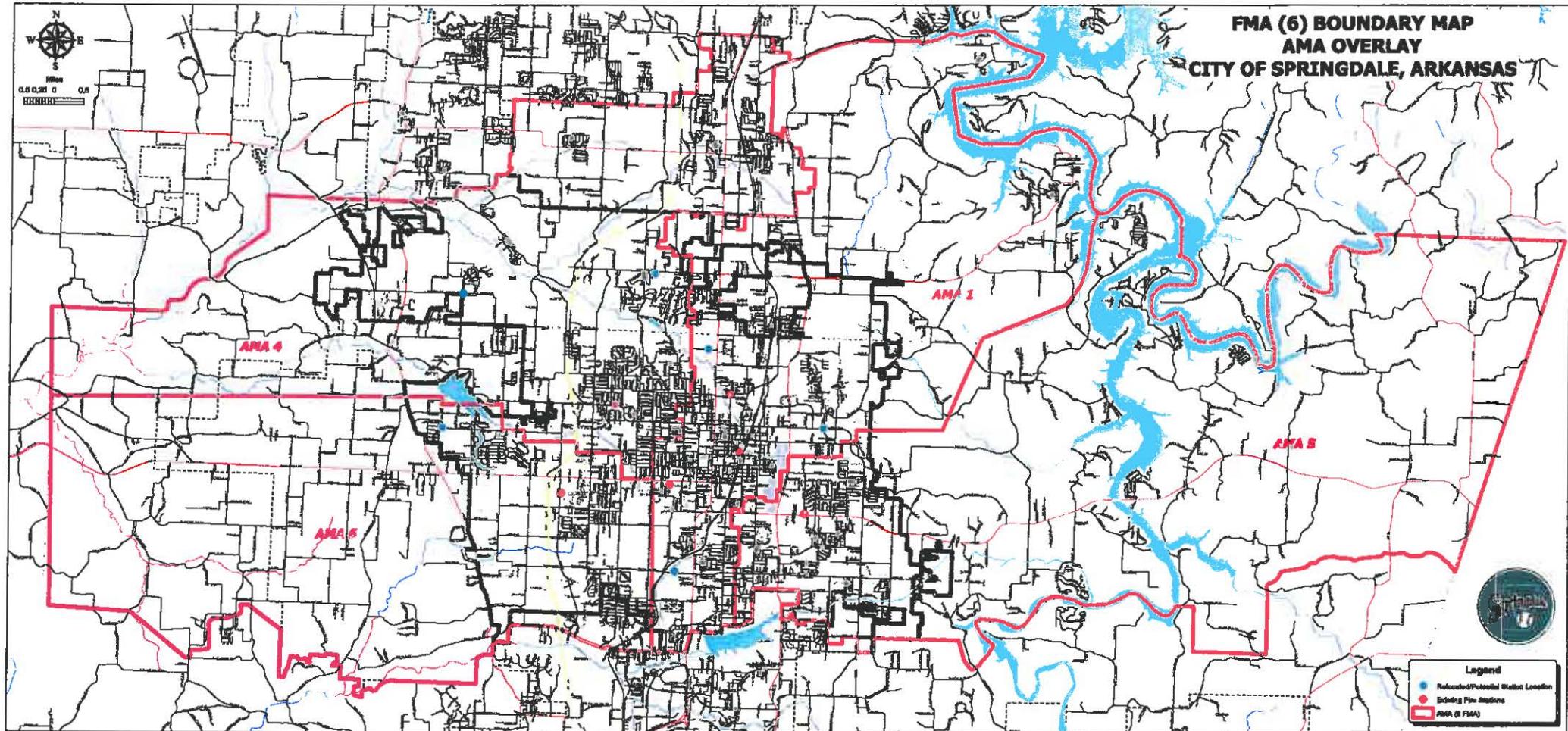
BENTON COUNTY, ARKANSAS

By: \_\_\_\_\_  
HON. ROBERT D. CLINARD, Benton County Judge

CITY OF SPRINGDALE, ARKANSAS

By: \_\_\_\_\_  
HON. DOUG SPROUSE, Mayor

\_\_\_\_\_  
Attest: HON. DENISE PEARCE, City Clerk



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING EXECUTION OF A  
CONSTRUCTION MANAGEMENT CONTRACT FOR FIRE  
DEPARTMENT IMPROVEMENT PROJECTS IN THE 2012  
BOND IMPROVEMENT PROGRAM**

**WHEREAS**, the City of Springdale approved a bond measure in August of 2012 to provide 9 million dollars for the purpose of fire department improvement projects, and

**WHEREAS**, under this bond measure the City of Springdale is planning to construct three fire stations, and

**WHEREAS**, the Police and Fire Committee desire to utilize construction management (CM) services commonly referred to as "CM at Risk", and

**WHEREAS**, using the procurement procedures required by State Law, the program management team made recommendations and the Police and Fire Committee selected Commerce Construction Company, Inc. to perform construction management services for the fire station projects; and

**WHEREAS**, a contract has been submitted for review to cover the terms and cost for pre-construction services as well as the terms for construction services; and

**WHEREAS**, upon bidding the project an amendment will be submitted for approval with the agreed upon guaranteed maximum price (GMP) of the projects,

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that:

The Mayor and City Clerk are hereby authorized to execute a construction management contract with Commerce Construction Company, Inc. in amounts not to exceed the maximum fees listed.

**PASSED AND APPROVED** this \_\_\_\_\_ day of March, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

# AIA<sup>®</sup> Document A133™ – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

AGREEMENT made as of the Twenty-Ninth day of May in the year Two Thousand  
Thirteen

*(In words, indicate day, month and year.)*

BETWEEN the Owner:

*(Name, legal status and address)*

City of Springdale  
201 Spring Street  
Springdale, Arkansas 72764

and the Construction Manager:  
*(Name, legal status and address)*

Commerce Construction Company  
695 N. 40<sup>th</sup> Street  
Springdale, Arkansas 72762

for the following Project:  
*(Name and address or location)*

City of Springdale Fire Station Upgrades

The Architect:

*(Name, legal status and address)*

Miller Boskus Lack Architects, P.A.  
2397 N. Green Acres Road  
Fayetteville, Arkansas 72703

The Owner's Designated Representative:  
*(Name, address and other information)*

Alan Pugh, P.E.  
City of Springdale  
201 Spring Street  
Springdale, Arkansas 72764

The Construction Manager's Designated Representative:  
*(Name, address and other information)*

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

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

Int.

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Dennis Moore  
Commerce Construction Company  
695 N. 40<sup>th</sup> Street  
Springdale, Arkansas 72762

The Architect's Designated Representative:  
*(Name, address and other information)*

Roger A. Boskus  
Miller Boskus Lack Architects, P.A.  
2397 N. Green Acres Road  
Fayetteville, Arkansas 72703

The Owner and Construction Manager agree as follows.

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User Notes: (2004174670)

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1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
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**ARTICLE 1 GENERAL PROVISIONS**

**§ 1.1 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 the 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. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

**§ 1.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

**§ 1.3 General Conditions**

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

**ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction

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Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

## **§ 2.1 Preconstruction Phase**

**§ 2.1.1** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### **§ 2.1.2 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### **§ 2.1.4 Phased Construction**

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### **§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project.

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager is expected to have general knowledge of those items and shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

### § 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

### § 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The

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5

Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The reasonableness of the objection shall be determined by the Owner.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

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

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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§ 3.1.4.2 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 surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, not otherwise provided by typical construction management services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, B201™-2007, General Conditions of the Contract for Construction, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. ~~The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.~~

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

**\$15,000 WILL BE BILLED ONLY IF COMMERCE CONSTRUCTION CO. DOES NOT DO THE JOB FOR ANY REASON !!**

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within (3) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

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§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. ~~Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)~~

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.) SIX (6) % OF THE TOTAL CONTRACT COST.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

SIX (6) % OF THE CHANGE ORDER AMOUNT.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

TEN (10) % PERCENT

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed 8 percent (8%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
NONE		

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

GMP DOES NOT INCLUDE ANY REQUIRED CHANGE ORDERS BY ARCHITECT. ANY SAVINGS UNDER THE GMP SHALL BE SPLIT BETWEEN THE OWNER 50% AND CONTRACTOR 50%. 45%

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

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**§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

**§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

**§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

~~**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs~~

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~~of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.~~

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

~~§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

~~§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.~~

### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

### § 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received

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payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law, at which point they will be turned over to the city in their entirety.

### ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

#### § 7.1 Progress Payments

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

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the fifth (5<sup>th</sup>) day of a month, the Owner shall make payment of the certified amount to the Construction Manager 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 shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~ 15 working days after receipt of the certified Application for Payment from the architect  
(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of

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the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 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. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent ( 5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent ( 5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations,

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audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 7.2 Final Payment**

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

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

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 7.2.4** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

**ARTICLE 8 INSURANCE AND BONDS**

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

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

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

**ARTICLE 9 DISPUTE RESOLUTION**

**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the

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Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

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

Arbitration pursuant to Section 15.4 of AIA Document A201-2007

Litigation in a court of competent jurisdiction

Other: *(Specify)*

Should any dispute arise out of or pertaining to the performance of the Agreement, such dispute shall initiated and decided solely in a Circuit Court located in Washington County, Arkansas.

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the 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.)*

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a

condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

#### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

### **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201-2007.

#### **§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.3 Governing Law**

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### **§ 11.5 Other provisions:**

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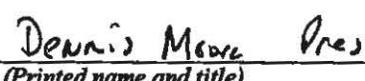
**ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 12.2** The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
  
- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
  
- .5 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

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

<hr/> <p><b>OWNER</b> <i>(Signature)</i></p>	 <hr/> <p><b>CONSTRUCTION MANAGER</b> <i>(Signature)</i></p>
<hr/> <p><i>(Printed name and title)</i></p>	 <hr/> <p><i>(Printed name and title)</i></p>

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

I, Roger A. Boskus, AIA, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 14:30:20 on 05/28/2013 under Order No. 5360090163\_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 A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

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

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

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

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

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

**for the following PROJECT:**

*(Name and location or address)*

City of Springdale Fire Station Upgrades

**THE OWNER:**

*(Name, legal status and address)*

City of Springdale

201 Spring Street

Springdale, Arkansas 72764

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

**THE ARCHITECT:**

*(Name, legal status and address)*

Miller Boskus Lack Architects, P.A.

2397 N. Green Acres Road

Fayetteville, Arkansas 72703

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

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

#### **§ 1.1.2 THE CONTRACT**

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

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

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

#### **§ 1.1.6 THE SPECIFICATIONS**

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

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

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

#### **§ 1.1.8 INITIAL DECISION MAKER**

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

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

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

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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

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

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

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

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

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

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

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

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portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

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

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

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

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

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

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

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

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

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## § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

## § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

## § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

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

### § 3.5 WARRANTY

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

### § 3.6 TAXES

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

### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

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

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

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continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 ALLOWANCES**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

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

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

### **§ 3.9 SUPERINTENDENT**

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

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

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

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

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

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

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

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 3.13 USE OF SITE**

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

**§ 3.14 CUTTING AND PATCHING**

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

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

**§ 3.15 CLEANING UP**

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

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

**§ 3.16 ACCESS TO WORK**

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

**§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

**§ 3.18 INDEMNIFICATION**

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

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

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

#### ARTICLE 4 ARCHITECT

##### § 4.1 GENERAL

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

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

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

##### § 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

##### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

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

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

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

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

#### § 5.3 SUBCONTRACTUAL RELATIONS

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

#### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

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

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

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

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

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

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

##### § 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

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### § 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-Owner~~ 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~~ with Owner approval.

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

### § 7.2 CHANGE ORDERS

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

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

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

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

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

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

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

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

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

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

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

#### § 7.4 MINOR CHANGES IN THE WORK

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

### 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.

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## § 8.2 PROGRESS AND COMPLETION

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

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

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

## § 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

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

### § 9.3 APPLICATIONS FOR PAYMENT

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

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon

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compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

#### § 9.4 CERTIFICATES FOR PAYMENT

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

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

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the

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Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

#### § 9.7 FAILURE OF PAYMENT

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

#### § 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

#### § 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract

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Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

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

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

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whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

#### § 10.3 HAZARDOUS MATERIALS

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

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

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

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

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

§ 10.3.6 If, without ~~negligence-cause~~ on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby ~~incurred-incurred~~, provided the Owner is immediately notified upon discovery of the material or substance and the material or substance is disposed of in accordance with all applicable laws/regulations.

#### § 10.4 EMERGENCIES

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

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

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

~~§ 11.2 OWNER'S LIABILITY INSURANCE~~

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall may choose to purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Nothing in this section shall be interpreted as a requirement of the Owner to purchase and maintain insurance of any kind.

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

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

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

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

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

~~§ 11.3.2 BOILER AND MACHINERY INSURANCE~~

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

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### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards ~~however caused not caused by the contractor.~~

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

### § 11.3.7 WAIVERS OF SUBROGATION

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

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

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

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of

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binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 UNCOVERING OF WORK

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

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

#### § 12.2 CORRECTION OF WORK

##### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

##### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

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

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2-12.2, except for that work directly affected by the correction

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

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

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

#### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

### ARTICLE 13 MISCELLANEOUS PROVISIONS

#### § 13.1 GOVERNING LAW

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

#### § 13.2 SUCCESSORS AND ASSIGNS

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

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

#### § 13.3 WRITTEN NOTICE

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

#### § 13.4 RIGHTS AND REMEDIES

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

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

#### § 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

#### ~~§ 13.6 INTEREST~~

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

#### § 13.7 TIME LIMITS ON CLAIMS

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

### ARTICLE 14. TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 TERMINATION BY THE CONTRACTOR

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

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

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

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

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

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

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

#### § 15.1.2 NOTICE OF CLAIMS

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

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

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

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

## § 15.2 INITIAL DECISION

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

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

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

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

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

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

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

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

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

## § 15.3 MEDIATION

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

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

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

#### § 15.4 ARBITRATION

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

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

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

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

#### § 15.4.4 CONSOLIDATION OR JOINDER

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

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

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

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

I, Roger A. Boskus, AIA, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 15:59:36 on 05/28/2013 under Order No. 5360090163\_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 A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

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

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

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

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Springdale, Arkansas, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 114 - TRAFFIC AND VEHICLES >> ARTICLE III. TRUCKS AND TRUCK ROUTES >>

ARTICLE III. TRUCKS AND TRUCK ROUTES

Sec. 114-86. Definitions.

Sec. 114-87. Truck routes authorized.

Sec. 114-88. Violations.

Sec. 114-89. Penalty.

Secs. 114-90—114-110. Reserved.

**Sec. 114-86. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Street* means any paved or otherwise improved street, road, highway, avenue, boulevard or other land transportation route commonly used by automobiles, trucks, buses or motorcycles.

 *Truck* means any vehicle weighing 5,000 pounds or more.

(Code 1973, § 32-23)

**Cross reference**— *Definitions generally*, § 1-2.

**Sec. 114-87. Truck routes authorized.**

The city council hereby authorizes, empowers and appoints the city council street committee and the police committee to work jointly in such manner as they see fit to designate and make certain city streets as truck routes; to purchase or have constructed signs or signals to mark such truck routes, and to change or modify such routes or markings as the joint committee deems necessary or desirable to effect the purposes of this article.

(Code 1973, § 32-24)

**State law reference**— *Authority generally*, A.C.A. § 27-49-106.

**Sec. 114-88. Violations.**

It is unlawful for any person to drive or park, or permit the driving or parking, of any truck on any city street not expressly marked as a truck route; provided, however, that this prohibition shall not apply to any truck making a bona fide pickup or delivery of property or merchandise when it is necessary to leave the marked truck route to do so.

(Code 1973, § 32-26)

**Sec. 114-89. Penalty.**

Any person in violation of this article shall be subject to the penalties in section 1-9.

(Code 1973, § 32-27)

**Secs. 114-90—114-110. Reserved.**

**Twelve (12) Month Registration Fee Chart Of Class Two (2) Through Eight (8) Trucks And Trailers Pulled By Class Two (2) Through Eight (8) Trucks - In the chart below, the weight class is listed in the shadowed area. Below each weight class, the weight per thousand lbs. is listed in the left column corresponding to the twelve (12) month fee for that weight class in the right column.**

<b>B CLASS</b>		30,000	\$254.00	55,000	\$608.00	<b>NR &amp; FARM CLASS</b>	
6,001	\$39.00	31,000	262.00	<b>P CLASS</b>		8,000	\$33.00
7,000	46.00	32,000	270.00	56,001	\$692.00	9,000	35.00
8,000	52.00	33,000	279.00	57,000	704.00	10,000	39.00
9,000	59.00	34,000	287.00	58,000	716.00	11,000	43.00
10,000	65.00	35,000	296.00	59,000	729.00	12,000	47.00
11,000	72.00	36,000	304.00	<b>H CLASS</b>		13,000	51.00
12,000	78.00	37,000	313.00	60,001	819.00	14,000	55.00
13,000	85.00	38,000	321.00	61,000	833.00	15,000	59.00
14,000	91.00	39,000	330.00	62,000	846.00	16,000	62.00
15,000	98.00	<b>D CLASS</b>		63,000	860.00	17,000	65.00
16,000	104.00	40,001	\$442.00	64,000	874.00	3 AXLE	98.00
17,000	111.00	41,000	453.00	65,000	887.00	4 AXLE	130.00
18,000	117.00	42,000	464.00	66,000	901.00	5 AXLE	163.00
19,000	124.00	43,000	475.00	67,000	915.00	<b>NR &amp; FARM HALLING ANIMAL FEED ONLY</b>	
<b>C CLASS</b>		44,000	486.00	<b>J CLASS</b>		5 AXLE	\$650.00
20,001	\$169.00	45,000	497.00	68,001	\$972.00	<b>FARM COTTON MODULE</b>	
21,000	177.00	46,000	508.00	69,000	987.00	TAG PERMIT	\$163.00
22,000	186.00	47,000	519.00	70,000	1,001.00	TOTAL	487.00
23,000	194.00	48,000	530.00	71,000	1,015.00	<b>TRAILER PULLED BY CLASS 2-8 TRUCK</b>	
24,000	203.00	49,000	541.00	72,000	1,030.00	ST	\$20.00
25,000	211.00	50,000	553.00	73,000	1,044.00		
26,000	220.00	51,000	564.00	<b>K CLASS</b>			
27,000	228.00	52,000	575.00	73,281 THROUGH 80,000	\$1,350.00		
28,000	237.00	53,000	586.00				
29,000	245.00	54,000	597.00				

Title fee	\$10.00
Class 2 - 8 truck tag transfer to another vehicle	\$10.00
Class 2 - 8 truck both tag and truck to new owner (applies to class 2 - 8 trucks only)	\$1.00
Lien filing for title lien	.50

**(3) Trucks and Trailers.** For all motor trucks, trailers, and semi-trailers including pipe and pole dollies, equipped with pneumatic tires, the license fee shall be charged on the basis of the gross loaded weight of the vehicle as follows:

**(A) Class One** -- All trucks and vans that are rated by the manufacturer as having a nominal tonnage of one (1) ton that are used exclusively for personal transportation and are not used for commercial or business purposes and all trucks and vans that are rated by the manufacturer as having a nominal tonnage of three-quarter (3/4) ton or less shall be assessed a license fee of twenty-one dollars (\$21.00) without regard to weight. All one-ton trucks and vans that are used for commercial or business purposes shall be registered in the appropriate class according to gross laden weight;

**(B) Class Two** -- On all such vehicles with a gross loaded weight between six thousand one pounds (6,001 lbs.) and twenty thousand pounds (20,000 lbs.), the fee to be charged shall be at the rate of six dollars and fifty cents (\$6.50) per thousand pounds of gross loaded weight of the vehicles;

**(C) Class Three** -- On all such vehicles with a gross loaded weight between twenty thousand one pounds (20,001 lbs.) and forty thousand pounds (40,000 lbs.), the fee to be charged shall be at the rate of eight dollars and forty-five cents (\$8.45) per thousand pounds of the gross loaded weight of the vehicles;

**(D) Class Four** -- On all such vehicles with a gross weight between forty thousand one pounds (40,001 lbs.) and fifty-six thousand pounds (56,000 lbs.), the fee to be charged shall be at the rate of eleven dollars and five cents (\$11.05) per thousand pounds of gross loaded weight of the vehicles;

**(E) Class Five** -- On all such vehicles with a gross loaded weight between fifty-six thousand one pounds (56,001 lbs.) and sixty thousand pounds (60,000 lbs.), the fee to be charged shall be at the rate of twelve dollars and thirty-five cents (\$12.35) per thousand pounds of gross loaded weight of the vehicles;

**(F) Class Six** -- On all such vehicles with a gross loaded weight between sixty thousand one pounds (60,001 lbs.) and sixty-eight thousand pounds (68,000 lbs.), the fee to be charged shall be at the rate of thirteen dollars and sixty-five cents (\$13.65) per thousand pounds of gross loaded weight of the vehicles;

**(G) (i) Class Seven** -- On all such vehicles with a gross loaded weight between sixty-eight thousand one pounds (68,001 lbs.) and seventy-three thousand two hundred eighty pounds (73,280 lbs.), the fee to be charged shall be at the rate of fourteen dollars and thirty cents (\$14.30) per thousand pounds of gross loaded weight of the vehicles.

**(ii)** On all such vehicles with a gross loaded weight between seventy-three thousand, two hundred eighty-one pounds (73,281 lbs.) and eighty thousand pounds (80,000 lbs.), the fee to be charged shall be one thousand three hundred fifty dollars (\$1,350);

**(H) Class Eight.**

**(i)** In order to aid in the development of the natural resources and to promote agriculture, timber harvesting, and forestry in Arkansas and in order to eliminate apparent inequities in license charges for vehicles using only improved roads and those used primarily on the farm, for timber harvesting or forestry, in the wooded areas, and off the main highway system of this state, a special classification is created to provide a different and more equitable rate for those vehicles used exclusively for the noncommercial hauling of farm or timber products produced in this state and for the hauling of feed, seed, fertilizer, poultry litter, and other products commonly produced or used in agricultural operations or the hauling of animal feed by owners of livestock or poultry for consumption in this state by livestock or poultry

**Class A**

Any combination of vehicles with a gross vehicle weight rating of 26,001 pounds or more, provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. No Class A license shall be issued to any person under the age of 18 years.

**Class B**

Any single vehicle with a GVWR of 26,001 pounds or more and any such vehicle towing a vehicle not in excess of 10,000 pounds. No Class B license shall be issued to any person under the age of 18 years.

**Class C**

Any single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds comprising:

- Vehicles designed to transport 16 passengers or more including the driver, and
- Vehicles used in the transportation of hazardous materials which require the vehicle to be placarded under 49 CFR , part 192, sub part F (Federal Regulations). No Class C license shall be issued to any person under the age of 18 years.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING A JOINT  
STREET PROJECT WITH THE CITY OF  
BETHEL HEIGHTS**

**Whereas**, the City of Springdale shares a portion of Jefferson Street and Kendrick Lane with the City of Bethel Heights, and

**Whereas**, the City of Bethel Heights has received State Aid Street funds in the amount of \$250,000, and

**Whereas**, it is in the best interest of both the City of Springdale and the City of Bethel Heights to partner together to pave the shared portions of Jefferson Street and Kendrick Lane, and

**Whereas**, the City of Springdale's portion of Jefferson Street would cost \$16,683 for Public Works to pave using in-house labor and equipment and it would cost \$7,524 to pave the City's portion of Kendrick Lane,

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the Mayor is hereby authorized to participate in a joint street project with the City of Bethel Heights and reimburse the City of Bethel Heights the amount of \$24,207 for paving Springdale's portion of Jefferson Street and Kendrick Lane.

**PASSED AND APPROVED** this 25<sup>th</sup> day of March, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION BY THE CITY COUNCIL OF THE  
CITY OF SPRINGDALE TO APPROPRIATE FUNDS  
FOR PLANTING TREES ON DON TYSON PARKWAY**

**WHEREAS**, the Rotary Club of Springdale (the Club) and the City of Springdale entered into an agreement to share equally in the construction of a playground in Rotary Park with an estimated cost of \$600,000, and

**WHEREAS**, the City's share of the construction of the playground was \$252,547 and did not require all of the \$300,000 committed to this project, and

**WHEREAS**, the Club and the City also agreed to share in the renovation of the adjacent basketball court and the City's share of that project was \$13,978.50, and

**WHEREAS**, there is a balance of \$33,474.50 remaining of the \$300,000 appropriation for these projects, and

**WHEREAS**, there is a need to plant trees in the median of Don Tyson Parkway between Thompson and Hylton Road and the Club has committed up to \$10,000 for this project,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS** that the City Council hereby approves spending \$33,474.50 of Capital Improvement Project funds for planting trees in the median of Don Tyson Parkway between Thompson and Hylton Road.

**PASSED AND APPROVED** this 25<sup>th</sup> day of March, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

**ATTEST:**

\_\_\_\_\_  
Denise Pearce, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Ernest Cate, City Attorney



[www.proscape77.com](http://www.proscape77.com)

423 Oak Grove Rd. Springdale, AR 72762 Phone: (479) 751-2764 Fax: (479) 750-0578

March 10, 2014

City Of Springdale  
291 Spring Street  
Springdale, Arkansas 72764

Reg: Joint Venture Project with Rotary Club Of Springdale - Tree Planting Don Tyson Parkway

138	2" Sugar Maple Trees	285.00 ea	39,330.00
		Sales Tax:	<u>3,834.67</u>
		Total Cost:	\$43,164.67

Price includes: all materials, labor, and installation. Price also includes transplanting of ten existing trees from median to one of Springdale Public schools. Also included is the digging up of any other trees the city may want to transplant themselves. We will need the city to help with traffic control while we plant. Tree staking is not included. We will warranty all Sugar Maple trees to leaf out this spring. City of Springdale to deep water trees within two day after planting.

Time is of an essence, the existing trees need to be transplant as soon as possible to give them better chance of survival. We have located the 138 - 2" Sugar maple trees, however we need to give our supplier a commitment to hold them for us.

Thank you so much for asking me to quote this project for you.

Jeff Q. Hunter

\_\_\_\_\_  
Proposal Approved (Signature & Date)\*

*Doug Sprouse*  
*3/12/2014*  
*\$ 33,474.50*  
*contingent on*  
*Council Approval*

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AMENDING SECTION 4.10 OF THE PERSONNEL AND PROCEDURES MANUAL FOR THE CITY OF SPRINGDALE, ARKANSAS**

**WHEREAS**, on January 14, 2014, the City Council for the City of Springdale, Arkansas, adopted a Resolution amending Section 4.10 of the Personnel and Procedures Manual for the City of Springdale, Arkansas, to create "On-Call" pay for certain City employees;

**WHEREAS**, certain the provision providing for "On-Call" pay should be amended to provide that "On-Call" pay should not be allowed on days when the employee is using sick leave, unless approved by the Mayor;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that:**

**Section 1:** Section 4.10 of the Personnel and Procedures Manual for the City of Springdale, Arkansas is hereby amended to read as follows:

**4.10 Additional Compensation for Certain Employees:**

In addition to regular pay, including any holiday compensation, certified full-time paramedics of the Springdale Fire Department shall receive an additional salary compensation, to be determined by the City Council. Those full-time firefighters who are members of HAZMAT shall receive additional compensation in an amount to be determined by the City Council.

Police officers who have attained any certificate, except the Basic Certificate, under the Arkansas Commission on Law Enforcement Standards, shall receive an additional compensation each month for each certificate earned above the "Basic Certificate," and said compensation amount shall be set by the City Council.

Animal Control Officers, employees of the Information Technology Department, employees of the Public Works Signalization Division, and designated employees of the Police Department shall receive additional compensation of \$15.00 per day when required to be "On-Call" after normal work hours. The designated employees of the Police Department entitled to "On-Call" compensation shall be: 1) Criminal Investigation Division Sergeant; 2) Criminal Investigation Division Detective; 3) In-House Narcotics Detective; 4) Drug Enforcement Agency Detective; and 5) 4<sup>th</sup> Judicial Drug Task Force Detective. Provided, however, that an employee shall not be eligible for "On-Call" compensation on any day that the employee is using sick leave, unless approved by the Mayor.

All additional pay set out in this policy is paid bi-weekly, and such compensation is set out on the employee's paycheck.

**Section 2:** All other provisions of Section 4 not specifically modified herein shall remain in full force and effect.

**PASSED AND APPROVED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney