



**AGENDA - SHOREWOOD BOARD OF TRUSTEES**  
**Village Board Meeting**  
**7:30 P.M. – Monday, October 17, 2016**  
**Shorewood Village Hall, 3930 North Murray Avenue**  
**Shorewood, Wisconsin 53211**

Public comments on items not on the agenda are permitted and welcome at the beginning of the Village Board meeting under “Citizens to be Heard.” Public comments on agenda items may be invited after the item has been opened to discussion. Individual speakers should raise their hand so they may be recognized by the Village President and are asked to begin their comments by stating their name and address. Discussion may follow comment on non-agenda items or discussion and action may come at future meetings.

1. Call to Order
2. Roll Call
3. Statement of Public Notice
4. Consent Agenda Items (Items under the consent agenda may be acted upon by one motion. If in the judgment of any Village Board Member, a consent agenda item needs discussion, the item can be placed in the items removed from the consent agenda.)
  - a. Presentation of Accounts October 17, 2016
  - b. Disallowance of Claim – Joseph Ciccarelli
  - c. Approval of application for Parade Permit for Shorewood Fitness Center & Shorewood School District 5k Fun Run/Walk a.k.a. Fowl 5k on November 12, 2016
5. Items removed from the Consent Agenda
6. October 3, 2016 Village Board Minutes
7. Citizens to be heard – This item is for matters not on the agenda. Discussion may follow comment on non-agenda items or discussion and action may come at future meetings.
8. New Business
  - a. Public Safety
    1. Consideration of Ordinance to Amend the Residential Congested Commuter Area Parking District
    2. Consideration of approval of the construction management contract with Riley Construction Company for the Police Building at 4075 N Wilson
  - b. Public Works
    1. Review of Village of Shorewood and BublR Bikes Term Sheet for bike share operations
    2. Presentation and Continued Discussion of Refuse Collection
  - c. Community Development Authority
    1. Update of transfers from TIF 1 to CDA per Board action on February 17, 2016

9. Reports of Village Officials
  - a. Village President
  - b. Village Trustees
  - c. Village Manager
10. Items for Future Consideration
11. Adjournment

DATED at Shorewood, Wisconsin this 13<sup>th</sup> day of October, 2016.

VILLAGE OF SHOREWOOD  
Tanya O'Malley, WCPC, Village Clerk/Treasurer

Should you have any questions or comments regarding any items on this agenda, contact the Manager's Office at 847-2702. It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information; no action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice.

Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals.



**PLEASE TAKE NOTICE** that meetings of **STANDING COMMITTEES** of the Village Board will be held in the 2<sup>ND</sup> Floor of Village Hall, 3930 N. Murray Avenue, Shorewood, Wisconsin, as follows:

**BUDGET & FINANCE** – Trustee Michael Maher, Chairperson

Monday, October 17, 2016 at 6:00 p.m. – to consider:

1. Presentation of Accounts October 17, 2016

**PUBLIC SAFETY COMMITTEE** – Trustee Allison Rozek, Chairperson

Monday, October 17, 2016 at 6:15p.m. – to consider:

1. Consideration of Ordinance to Amend the Residential Congested Commuter Area Parking District
2. Consideration of approval of the construction management contract with Riley Construction Company for the Police Building at 4075 N Wilson

**COMMUNITY & BUSINESS RELATIONS** – Trustee Tammy Bockhorst, Chairperson

Monday, October 17, 2016 at 7:00 p.m. – to consider:

1. Discussion on Video production of additional Village meetings

**JUDICIARY, PERSONNEL, AND LICENSING** – Trustee Ann McKaig, Chairperson

Monday, October 17, 2016 at 6:15 p.m. – to consider:

1. Discussion and Consideration of Appointments to Boards, Committees, and Commissions
2. Consideration of application for Parade Permit for Shorewood Fitness Center & Shorewood School District 5k Fun Run/Walk a.k.a. Fowl 5k on November 12, 2016
3. Discussion on Committee Quorum, Attendance Policies, and Term Limits

**PUBLIC WORKS COMMITTEE** – Tr. Davida Amenta, Chairperson

Monday, October 17, 2016 at 6:45 p.m. – to consider:

1. Review of Village of Shorewood and BublR Bikes Term Sheet for bike share operations

**DATED** this 13<sup>th</sup> day of October, 2016. Tanya O'Malley, WCPC, Village Clerk/Treasurer

Should you have any questions or comments regarding items on this agenda, please contact the Manager's Office 847-2702.

It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information; no action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice.

Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals.

**VILLAGE OF SHOREWOOD, WISCONSIN  
CLERK-TREASURER'S OFFICE  
MEMO**

**DATE:** October 4, 2017  
**TO:** Budget and Finance Committee  
**FROM:** Finance Office  
**COPY TO:** Village Board  
Chris Swartz, Village Manager  
**RE:** Accounts Payable and Payroll Vouchers for Presentation and Approval

Presented for your approval are the following accounts payable vouchers:

100 - General Fund		\$ 110,388.54
200 - Library		26,832.72
210 - Elder Service Fund		162.44
220 - Marketing & Communications Fund		-
230 - Shorewood Today Magazine		-
240 - Special Funds		-
250 - Public Art Funds		-
300 - Debt Service Fund		-
400 - Capitol Projects Fund		27,619.72
410 - TIF #1		-
430 - TIF #3		-
440 - TIF #4		-
450 - TIF #5		-
600 - Parking Utility Fund		1,034.19
610 - Water Utility Fund		23,886.36
620 - Sewer Utility Fund		58.67
800 - Property Tax Fund		-
900 - Cash Fund		-
	<b>Subtotal:</b>	<u>\$ 189,982.64</u>
<b>PLUS:</b> Payroll vouchers per check register dated		-
	<b>Grand Total</b>	<b><u>\$ 189,982.64</u></b>
	Begin Ck #	End Chk #
Accounts Payable Checks:	24728	24780
Accounts Payable Electronic Checks:		
Payroll Checks:		
Payroll Direct Deposits:		
Payroll Electronic Check Remittances:		

GL Number	Inv. Line Desc	Vendor	Invoice Desc.	Invoice	Due Date	Amount	Check #
Fund 100 General Fund							
Dept 1410 Manager							
100-1410-53100	Office Supplies	US CELLULAR	CELLULAR PHONE CHARGES	0155330735	10/05/16	35.50	24778
Total For Dept 1410 Manager						35.50	
Dept 1421 Elections							
100-1421-53500	Dept/Program Supplies	BEAR GRAPHICS INC	ABSENTEE ENV/BALLOT/LABELS	753520	10/05/16	1,070.75	24732
Total For Dept 1421 Elections						1,070.75	
Dept 1900 Other General Admin							
100-1900-53150	Job Posting/Testing/Hiring	HUMBER MUNDIE MCCL	ROGERS, WEISFLOG, WOLBER ASSESSME	315114	10/05/16	1,450.00	24743
Total For Dept 1900 Other General Admin						1,450.00	
Dept 2100 Police							
100-2100-45120	Court Fines	MILW CNTY TREASURER	CNTY JAIL, DRIVER & IID SURCHARGES	OCT2016CO	10/05/16	1,784.20	24752
100-2100-45120	Court Fines	STATE OF WISCONSIN	CT COSTS, PEN ASSESSMENTS, CRIME LAB	OCT2016ST	10/05/16	4,128.11	24771
100-2100-51330	Uniform Expense	LARK UNIFORM OUTFITT	EMBLEMS ON/TAILORING	229329	10/05/16	11.95	24748
100-2100-51330	Uniform Expense	LARK UNIFORM OUTFITT	WOLBER NEW HIRE GEAR	229393	10/05/16	805.34	24748
100-2100-51330	Uniform Expense	LARK UNIFORM OUTFITT	WEISFLOG NEW HIRE GEAR	229338	10/05/16	585.29	24748
100-2100-52230	Phone and Internet	US CELLULAR	BILL DT 09/24/16	0156980584	10/05/16	435.00	24779
100-2100-53100	Office Supplies	CINTAS CORP	9/29/16	184771503	10/05/16	20.72	24735
100-2100-53120	Copy & Print Costs	JAMES IMAGING SYSTEM	COPIER USAGE PRINT DT 09/26/16	19432252	10/05/16	421.12	24744
100-2100-53500	Dept/Program Supplies	LEADER TOWING & TRAN	754JMY FROM 227 E TOWNSEND	47229	10/05/16	135.00	24749
Total For Dept 2100 Police						8,326.73	
Dept 2400 Planning and Development							
100-2400-44330	Plumbing Permits	BUDIAC PLUMBING	PLUMB PERMIT REIMBURSEMENT	16-1389	10/05/16	190.00	24733
100-2400-53100	Office Supplies	NATIONAL BUSINESS FUR	OFFICE CHAIR - C KOPYDLOWSKI	ZJ936214-HNC	10/05/16	203.00	24755
100-2400-53900	Miscellaneous Expenses	POP-A-LOCK	LOCKSMITH - 2010 JARVIS	27367	10/05/16	103.49	24761
100-2400-54620	Loan Program Expenses	TRANS UNION CORPORA	NEIGHBORHOOD LOAN PROGRAM	09643279	10/05/16	70.00	24776
Total For Dept 2400 Planning and Development						566.49	
Dept 2900 Other Public Safety							
100-2900-52300	Other Intergov'tal pymts	WHITEFISH BAY, VILLAGE	4TH QTR OPERATING	383	10/05/16	83,511.95	24780
100-2900-52990	Other Service Contracts & Fee	TWIN CITY SECURITY INC	09/19/16-09/25/16	12342944	10/05/16	1,829.00	24777
Total For Dept 2900 Other Public Safety						85,340.95	
Dept 3100 Public Works Admin.							
100-3100-51330	Uniform Expense	KAISER, JUDITH	REIMBURSMENT FOR CLOTHING	090616	10/05/16	144.98	24746
100-3100-52230	Phone and Internet	US CELLULAR	CELLULAR PHONE CHARGES	0155330735	10/05/16	171.25	24778
100-3100-53100	Office Supplies	SHOREWOOD PRESS	DPW LETTERHEAD	17783	10/05/16	45.00	24769
Total For Dept 3100 Public Works Admin.						361.23	
Dept 3230 Bldg Maint - Public Works							
100-3230-53500	Dept/Program Supplies	CARQUEST AUTO PARTS	SUPPLIES FOR BLDG MAINT	2514-510726	10/05/16	12.86	24734
100-3230-53500	Dept/Program Supplies	ORKIN COMMERCIAL SER	EXTERMINATING AT HUBBARD	123597378	10/05/16	89.50	24758

GL Number	Inv. Line Desc	Vendor	Invoice Desc.	Invoice	Due Date	Amount	Check #
Fund 100 General Fund							
Dept 3230 Bldg Maint - Public Works							
100-3230-53500	Dept/Program Supplies	ORKIN COMMERCIAL SER	EXTERMINATING AT DPW	123597016	10/05/16	84.08	24758
100-3230-53500	Dept/Program Supplies	RIGHT CHOICE JANITORIA	SUPPLIES FOR ALL DEPTS	114717	10/05/16	512.54	24765
Total For Dept 3230 Bldg Maint - Public Works						698.98	
Dept 3300 Municipal Garage							
100-3300-53400	Vehicle Maintenance	CARQUEST AUTO PARTS	PARTS FOR #24	2514-510684	10/05/16	70.76	24734
100-3300-53400	Vehicle Maintenance	JOHN PAUL'S GMC	PARTS FOR SQ3	338012	10/05/16	29.49	24745
100-3300-53400	Vehicle Maintenance	JOHN PAUL'S GMC	PARTS FOR SQ 3	337810	10/05/16	210.00	24745
100-3300-53400	Vehicle Maintenance	MENARDS	SUPPLIES FOR MECHANICS	12603	10/05/16	95.52	24750
100-3300-53400	Vehicle Maintenance	NAPA AUTO PARTS	PARTS FOR #87	462314	10/05/16	32.39	24754
100-3300-53400	Vehicle Maintenance	NAPA AUTO PARTS	SUPPLIES FOR MECHANICS STOCK	462003	10/05/16	33.16	24754
100-3300-53400	Vehicle Maintenance	POMP'S TIRE SERVICE	REPAIRS TO VOLVO	60101789	10/05/16	300.00	24760
100-3300-53400	Vehicle Maintenance	RNOW INC	PARTS FOR #76	2016-50529	10/05/16	86.76	24766
100-3300-53400	Vehicle Maintenance	TERMINAL SUPPLY	LAMPS FOR PD	51233-01	10/05/16	67.27	24775
100-3300-53410	Fuel and Oil	HERBST OIL INC	DIESEL FUEL	62851	10/05/16	1,022.47	24742
100-3300-53410	Fuel and Oil	HERBST OIL INC	UNLEADED FUEL	62813	10/05/16	2,060.40	24742
100-3300-53410	Fuel and Oil	MOORE OIL ENVIORNME	OIL DRUMS	7443772	10/05/16	1,304.25	24753
Total For Dept 3300 Municipal Garage						5,312.47	
Dept 3620 Parks and Beautification							
100-3620-52990	Other Service Contracts & Fee	GREEN TEAM	CAPITOL DR. BED MAINTENANCE	6608.	10/05/16	3,599.38	24739
100-3620-52990	Other Service Contracts & Fee	GREEN TEAM	CAPITOL DR. BED MAINTENANCE	6473	10/05/16	3,599.38	24739
Total For Dept 3620 Parks and Beautification						7,198.76	
Dept 4000 Health							
100-4000-53101	TELEPHONE EXPENSE	AT&T	LIBRARY ALARM LINES 9/22-10/21/16	414967240509 OC	10/05/16	14.79	24729
Total For Dept 4000 Health						14.79	
Dept 5140 Village Center							
100-5140-52230	Phone and Internet	AT&T	LIBRARY ALARM LINES 9/22-10/21/16	414967240509 OC	10/05/16	10.32	24729
Total For Dept 5140 Village Center						10.32	
Dept 5200 Atwater Beach and Park							
100-5200-53900	Miscellaneous Expenses	US CELLULAR	CELLULAR PHONE CHARGES	0155330735	10/05/16	1.57	24778
Total For Dept 5200 Atwater Beach and Park						1.57	
Total For Fund 100 General Fund						110,388.54	
Fund 200 Library							
Dept 5110 Library							
200-5110-46710	Library Fines	AMY LOOMIS	REFUND FOR ITEM LOST AND PAID THEN	LIR LOOMIS 0916	10/05/16	50.00	24728
200-5110-51900	Professional Education	SHIMON, NANCY	SEPT 28 MCFLS PARKING AND MILEAGE R	5970276	10/05/16	16.48	24768
200-5110-53100	Office Supplies	QUILL CORPORATION	PAPER, FACIAL TISSUE, PACKING TAPE, D	613-880-441-440	10/05/16	105.98	24763
200-5110-53100	Office Supplies	QUILL CORPORATION	PAPER, FACIAL TISSUE, PACKING TAPE, D	613-880-441-440	10/05/16	26.98	24763

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Fund 200 Library							
Dept 5110 Library							
200-5110-53100	Office Supplies	QUILL CORPORATION	PAPER, FACIAL TISSUE, PACKING TAPE, D	613-880-441-440	10/05/16	16.99	24763
200-5110-53101	TELEPHONE EXPENSE	AT&T	LIBRARY ALARM LINES 9/22-10/21/16	414967240509 OC	10/05/16	132.38	24729
200-5110-53130	Postage/Mailings	POLYLINE CORP	LIBRARY CD BINDER SLEEVES, 2-RING DIS	00046760	10/05/16	20.72	24759
200-5110-53500	Dept/Program Supplies	DEMCO	LIBRARY PROCESSING SUPPLIES - LABEL P	5970276	10/05/16	158.29	24736
200-5110-53500	Dept/Program Supplies	POLYLINE CORP	LIBRARY CD BINDER SLEEVES, 2-RING DIS	00046760	10/05/16	188.50	24759
200-5110-53710	Reference Continuations	READING GROUP CHOICE	SINGLE COPY READING GROUP CHOICES	INV-0524	10/05/16	11.03	24764
200-5110-54000	Programming	QUILL CORPORATION	PAPER, FACIAL TISSUE, PACKING TAPE, D	613-880-441-440	10/05/16	8.99	24763
200-5110-54510	Auermiller Expenses	BAKER & TAYLOR	AUERMILLER GRANT PURCHASES SEPT 20	AUERM SEPT16	10/05/16	1,269.08	24730
200-5110-54900	Onufrock Expenses	BAKER & TAYLOR	LIBRARY COLLECTION ITEMS PURCHASES	GIFT SEPT16	10/05/16	887.26	24730
200-5110-54900	Onufrock Expenses	DHA CREATIVE	PARTIAL PAYMENT FOR FURNITURE ORD	16ONUF- FURNITU	10/05/16	14,000.00	24737
200-5110-56130	Equipment/Furniture	HENRICKSEN & COMPAN	PARTIAL PAYMENT FOR LIBRARY FURNIT	QUOTE 86090993	10/05/16	5,000.00	24741
Total For Dept 5110 Library						21,892.68	
Dept 5111 Adult Materials							
200-5111-53730	Materials	BAKER & TAYLOR	LIBRARY ADULT FICTION COLLECTION ITE	AF SEPT16	10/05/16	269.99	24730
200-5111-53730	Materials	BAKER & TAYLOR	LIBRARY ADULT NON FICTION COLLECTIO	ANF SEPT16	10/05/16	1,340.57	24730
200-5111-53730	Materials	BAKER & TAYLOR	LIBRARY CIRC CONTINUATIONS / ANF ITE	CIRC SEPT16	10/05/16	83.36	24730
200-5111-53740	DVD's	BAKER & TAYLOR	LIBRARY DVDS/MOVIES SEPT 2016	ADVD SEPT16	10/05/16	708.58	24730
200-5111-53750	Audiobooks	BAKER & TAYLOR	LIBRARY AUDIO BOOKS SEPT 2016	ABKCD SEPT16	10/05/16	114.20	24730
200-5111-53770	Music	BAKER & TAYLOR	LIBRARY COLLECTION MUSIC CDS SEPT 20	ACD SEPT16	10/05/16	517.94	24730
Total For Dept 5111 Adult Materials						3,034.64	
Dept 5112 Childrens Materials							
200-5112-53730	Materials	BAKER & TAYLOR	LIBRARY JUVENILE CONTINUATIONS/ NF I	JUVCON SEPT16	10/05/16	243.60	24730
200-5112-53730	Materials	BAKER & TAYLOR	LIBRARY JUVENILE MATERIALS SEPT 2016	JUV SEPT16	10/05/16	612.30	24730
200-5112-53740	DVD's	BAKER & TAYLOR	LIBRARY JUVENILE DVDS/MOVIES SEPT 2	JDVD SEPT16	10/05/16	182.89	24730
Total For Dept 5112 Childrens Materials						1,038.79	
Dept 5113 Young Adult Materials							
200-5113-53730	Materials	BAKER & TAYLOR	LIBRARY YOUNG ADULT MATERIALS SEPT	YA SEPT16	10/05/16	866.61	24730
Total For Dept 5113 Young Adult Materials						866.61	
Total For Fund 200 Library						26,832.72	
Fund 210 Senior Services							
Dept 4600 Senior Services							
210-4600-53101	TELEPHONE EXPENSE	AT&T	LIBRARY ALARM LINES 9/22-10/21/16	414967240509 OC	10/05/16	14.44	24729
210-4600-54900	Other Programming	SUE KELLEY CONSULTING	REIMBURSEMENT FOR PHOTOCOPIES	SEPTEMBER2016	10/05/16	148.00	24773
Total For Dept 4600 Senior Services						162.44	
Total For Fund 210 Senior Services						162.44	
Fund 400 General Capital Projects							
Dept 3410 Street and Alley							

GL Number	Inv. Line Desc	Vendor	Invoice Desc.	Invoice	Due Date	Amount	Check #
Fund 400 General Capital Projects							
Dept 3410 Street and Alley							
400-3410-56321.16-01	Professional Fees Constructio	STRAND ASSOCIATES INC	2016 ROAD RECONSTRUCTION	0123001	10/05/16	26,222.22	24772
Total For Dept 3410 Street and Alley						26,222.22	
Dept 3830 Storm Maintenance							
400-3830-56600.16-05	Utility Infastructure	BAXTER AND WOODMAN	COMBINED SEWER SERVICE	0188144	10/05/16	1,397.50	24731
Total For Dept 3830 Storm Maintenance						1,397.50	
Total For Fund 400 General Capital Projects						27,619.72	
Fund 600 Parking Utility							
Dept 3900 Parking							
600-3900-54310	ATWATER LOT RENT	SCHOOL DISTRICT OF SH	PARKING PERMITS SOLD FOR THE MONT	SEPT PARK 16	10/05/16	12.00	24767
600-3900-54311	LAKE BLUFF LOT RENT	SCHOOL DISTRICT OF SH	PARKING PERMITS SOLD FOR THE MONT	SEPT PARK 16	10/05/16	66.00	24767
600-3900-54313	NORTH SHORE BANK LOT REN	NORTH SHORE BANK-PAR	PARKING PERMITS SOLD FOR THE MONT	SEPT PARK 16	10/05/16	198.00	24756
600-3900-54314	TCF BANK	TCF BANK	PARKING PERMITS SOLD FOR THE MONT	SEPT PARK 16	10/05/16	126.00	24774
600-3900-54315	HIGH SCHOOL EAST LOT RENT	SCHOOL DISTRICT OF SH	PARKING PERMITS SOLD FOR THE MONT	SEPT PARK 16	10/05/16	36.00	24767
600-3900-54320	OGDEN LOT RENT	OGDEN DEVELOPMENT G	PARKING PERMITS SOLD FOR THE MONT	SSEPT PARK 16	10/05/16	374.00	24757
600-3900-54321	Einstein Bagel Lot	EINSTEIN BAGELS #1490	PARKING PERMITS SOLD FOR THE MONT	SEPT PARK 16	10/05/16	127.50	24738
600-3900-54339	Lighthouse Lot	KENMORE PLACE 4041 C	LIGHTHORSE PARKING PERMIT SEP 16	SEPT PARK 16	10/05/16	94.69	24747
Total For Dept 3900 Parking						1,034.19	
Total For Fund 600 Parking Utility						1,034.19	
Fund 610 Water Utility							
Dept 3710 Water Administration							
610-3710-52230	Phone and Internet	US CELLULAR	CELLULAR PHONE CHARGES	0155330735	10/05/16	34.27	24778
610-3710-54720	PSC assessment	PUBLIC SERVICE COMM O	2016-17 ADVANCE ASSESSMENT 2015-16	RA17-I-05440	10/05/16	2,253.27	24762
Total For Dept 3710 Water Administration						2,287.54	
Dept 3730 Maint Mains							
610-3730-53500	Dept/Program Supplies	MID CITY PLBG-HTG INC	WATER MAIN BREAK - NEWTON	81153	10/05/16	5,741.50	24751
610-3730-53500	Dept/Program Supplies	MID CITY PLBG-HTG INC	REPLACE WATER MAIN - STOWWELL AND	81152	10/05/16	6,258.00	24751
610-3730-53500	Dept/Program Supplies	MID CITY PLBG-HTG INC	REPAIR WATER MAIN ON NEWTON	81155	10/05/16	5,854.03	24751
Total For Dept 3730 Maint Mains						17,853.53	
Dept 3740 Maint Services							
610-3740-53500	Dept/Program Supplies	MID CITY PLBG-HTG INC	REPLACE WATER SERVICE - KENSINGTON	81151	10/05/16	3,299.50	24751
Total For Dept 3740 Maint Services						3,299.50	
Dept 3760 Maint Hydrants							
610-3760-53500	Dept/Program Supplies	HD SUPPLY WATERWORK	PARTS FOR HYDRANTS	167584	10/05/16	56.50	24740
Total For Dept 3760 Maint Hydrants						56.50	
Dept 3790 Other Water							
610-3790-52920	Surveys/Studies & Plans	SHORT ELLIOT HENDRICK	MWWWW RATE CASE	321536	10/05/16	389.29	24770

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Fund 610 Water Utility							
Dept 3790 Other Water							
Total For Dept 3790 Other Water						389.29	
Total For Fund 610 Water Utility						23,886.36	
Fund 620 Sewer Utility							
Dept 3810 Sewer Administration							
620-3810-52230	Phone and Internet	US CELLULAR	CELLULAR PHONE CHARGES	0155330735	10/05/16	26.67	24778
Total For Dept 3810 Sewer Administration						26.67	
Dept 3830 Storm Maintenance							
620-3830-53500	Dept/Program Supplies	SHOREWOOD PRESS	FISH AND FEATHER STICKERS	17784	10/05/16	32.00	24769
Total For Dept 3830 Storm Maintenance						32.00	
Total For Fund 620 Sewer Utility						58.67	

GL Number	Inv. Line Desc	Vendor	Invoice Desc.	Invoice	Due Date	Amount	Check #
			Fund Totals:				
			Fund 100 General Fund			110,388.54	
			Fund 200 Library			26,832.72	
			Fund 210 Senior Services			162.44	
			Fund 400 General Capital Projects			27,619.72	
			Fund 600 Parking Utility			1,034.19	
			Fund 610 Water Utility			23,886.36	
			Fund 620 Sewer Utility			58.67	
			Total For All Funds:			<hr/>	
						189,982.64	



AT THE EDGE OF THE CITY AND  
THE HEART OF EVERYTHING

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

October 18, 2016

Joseph Ciccarelli  
1912 E Beverly Road  
Shorewood WI 53211

Re: Your Claim Against the Village of Shorewood  
Date of Loss: June 10, 2016

Dear Mr. Ciccarelli:

Pursuant to Wisconsin Statute 893.80(1g), at its meeting on October 17, 2016, the Village Board of the Village of Shorewood considered your claim for damages, received on September 12, 2016, asserting damage to your vehicle allegedly caused by driving over an exposed water pipe in your driveway on June 17, 2016, and denied it in full.

No lawsuit may be brought on this claim against the Village or any of its officials, officers, agents, or employees after six (6) months from the date of receipt of this letter.

If you have any questions on this claim, contact the Village Manager's Office at 414.847.2702.

Sincerely,

Tanya O'Malley  
Village Clerk

xc: Nathan Bayer, Village Attorney  
Sarah Bourgeois, Statewide Insurance, Claims Adjuster  
PO Box 5555, Madison, WI. 53705-0555  
File



AT THE EDGE OF THE CITY AND  
THE HEART OF EVERYTHING

### VILLAGE CLERK'S MEMO

DATE: October 13, 2016  
TO: Judiciary, Personnel and Licensing Committee  
Village Board  
FROM: Tanya O'Malley, Village Clerk/Treasurer  
Re: Parade Permit Application

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#### **BACKGROUND**

The Village has received an application for Parade Permit from the following:

- Shorewood Fitness Center & Shorewood School District 5k Fun Run/Walk a.k.a. Fowl 5k, November 12, 2016

Staff has reviewed this request and does not have any concerns.

#### **RECOMMENDATION**

Grant the permit listed in the Consent Agenda subject to the above listed conditions.



VILLAGE OF SHOREWOOD  
3930 N MURRAY AVENUE  
SHOREWOOD WI 53211  
Telephone 847-2601

SHOREWOOD VILLAGE CLERK  
3930 N MURRAY AVENUE  
SHOREWOOD, WI 53211  
PHONE 847-2601  
FAX 847-2602

**APPLICATION FOR PARADE PERMIT – Fee \$100**

Total Paid \$ 100

Permit # \_\_\_\_\_

This application must be filed with the Village Clerk not less than 15 days before the date on which it is proposed to conduct the event. If the event is to be held for a person other than the applicant, a communication in writing for the person proposing to hold the parade and authorizing the applicant to apply for the permit on his/her behalf must accompany this request.

**Please Type or Print ALL INFORMATION in Black**

Organization Sponsoring Event Shorewood Fitness Center & The School District of Shorewood  
22nd Annual Shorewood Fitness Center 5k Fun Run/Walk AKA: Fowl 5k

Organization Address 1701 E Capitol Drive Shorewood, WI 53211

Event Contact Person Sarah Kopplin or Shorewood High School Athletic Director LeVar Ridgeway

Business Phone 414-963-6952 x6202 Home Phone 414-967-0549 (Cell 414-915-1392) 963-6926

Date of event Saturday, November 12th, 2016 Hours beginning & ending Race begins 10:00am, end 11:00am

Approximate number & type of persons, animals & vehicles \_\_\_\_\_  
There will be between 250-300 runners/walkers participating in the race, possibly more. Last year we had 235. There is a possibility that there will be more now that the route is new and improved.

Will parade occupy entire street? Yes \_\_\_\_\_ No X

Please explain street use A portion of 1 lane of traffic will be coned off next to the sidewalk to allow space for runners and walkers. A detailed map is attached with the route. The sidewalk will also be utilized for walkers.

Assembly areas Setup for the race will begin approximately at 8:00am or whenever the Police Chief decides and will follow the route mentioned in the map. A detailed description also accompanies the map.

Hours of assembly \_\_\_\_\_

Intervals to be maintained between parade units A detailed description of this is attached.

I understand that there may be additional charges based on costs related to this event from the Police Department and the Department of Public Works. Signs can not be placed on traffic signs and lamp posts. If they are, a fee will be charged for the DPW to remove the signs and you will be billed accordingly.

Signature of Applicant:   
Title \_\_\_\_\_

**PARADE ROUTE:** Indicate route of parade on the map of Shorewood printed on the reverse side of this form. Show start (entry) and end (exit) points, and indicate progress with arrows. Attach map of entire route if event is not limited to Shorewood.



Friday, August 5, 2016

Dear Village Board,

On behalf of the Shorewood High School Cross Country programs I a request to utilize a route for the Fowl 5k route for November 12, 2016 that goes through the Village of Shorewood, just as we did last year. This is the 22nd Annual Shorewood Fitness Center Fun Run/Walk. For over 15 years this race has benefitted the Shorewood High School Cross Country teams and the proceeds help the teams to travel to Cross Country meets that garner collegiate exposure for our student-athletes. The race also promotes fitness within our community, showcases neighborhoods and schools and provides for a fun and wholesome community event in the Village of Shorewood.

The motivation to keep this route running through village streets is to make the race a more community focused event and to showcase the Shorewood School District and the village business district. Over the past three years this race route was successful and we hope to obtain permission to repeat this once again. Race volunteers will be provided as they were last year by the SHS Cross Country program to assist the Police Department in monitoring all intersections that are crossed by race participants. Approximately 60+ volunteers will be provided by the Shorewood Cross Country programs.

The race will take place along the sidewalk through village streets, as well as on a portion of the Oak Leaf Trail. Over the past two years we requested cones to mark off the race course on the street and the Police Department felt that we could manage without them (which we did), but we are again requesting Police Supervision at major intersections. This worked well last year and the Police Chief was very supportive of this collaboration. We also request temporary DPW closure for 1 hour as well as the gates opened near the race finish area where the DPW intersects Morris Blvd for runners/walkers to exit the Oak Leaf Trail in order to reach the SHS Track where the race finish line is located. The enclosed map shows the race route and the intersections that will be closed on a rolling schedule as the race progresses without the need to shut down Shorewood village streets in their entirety.

We hope to obtain permission from you once again for this parade permit so that we can continue to make this 5k Run/Walk experience a positive one and one that showcases our community.

Thank you,

Sarah Kopplin  
7th Grade World Geography Teacher, SIS  
Head Varsity Cross Country Coach (Girls), SHS  
Shorewood Community Resident (15 years)



**MINUTES - SHOREWOOD BOARD OF TRUSTEES**  
**Village Board Meeting**  
**October 3, 2016**

**Draft**

1. Call to Order  
President Johnson called the meeting of the Village Board to order at 7:36 p.m. in Village Hall.
2. Roll Call  
President Johnson called the roll. Present: Trustees Davida Amenta, Tammy Bockhorst, Michael Maher, Ann McKaig, Allison Rozek, Trustee Paul Zovic.  
  
Others Present: Village Attorney Nathan Bayer, Village Manager Chris Swartz, Village Clerk-Treasurer Tanya O'Malley, Police Chief Peter Nimmer, Planning and Development Director Ericka Lang
3. Statement of Public Notice  
Clerk-Treasurer O'Malley stated that the meeting had been posted and noticed according to law.
4. Consent Agenda Items
  - a) Presentation of Accounts October 3, 2016
  - b) Approve Temporary Cabaret License for Colectivo Coffee Roasters theater event on December 2, 2016  
Tr. McKaig requested the removal of item 4.c.  
Tr. Bockhorst moved, seconded by Tr. Maher to approve the amended consent agenda. Motion carried 7 – 0.
5. Items removed from the Consent Agenda
  - 4.c. Appointment to Recreation Advisory Committee – Clarerita Higgins, term expiration 2019  
This matter was deferred.
6. August 15, 2016 Village Board Minutes  
Tr. Maher requested that the language in item 5.c. be changed to read, "Tr. Maher Moved, seconded by Tr. Bockhorst to approve the addition of Oppeneheimer Investments to the Authorized Financial Institutions list contained in Appendix C of the Village's Cash and Investment Policy which was last approved by the Village Board on March 18, 2013. Motion carried 5 – 0."  
  
Tr. Rozek requested that the word "with" be changed to "without" in the last bullet of the first bulleted list in item 10.b.  
  
Tr. Rozek requested that the following be added to item 9.b.5.: "Tr. Rozek stated concerns that the wellness score card was too easy to achieve and would therefore not result in the desired outcome of increased employee wellness and decreased health plan costs. Assistant Manager Burkart stated that we would review the scorecard effectiveness after the first year of implementation."

Tr. Zovic requested to amend item 6, fourth paragraph to, "Tr. Zovic explained that based on geographic and economic constraints; environmental priorities; and community interests the Strategic Initiatives Committee . . ."

Tr. Maher moved, seconded by Tr. Bockhorst to approve the amended August 15, 2016 Village Board minutes. Motion carried 7 – 0.

7. September 19, 2016 Village Board Minutes

Tr. Amenta requested that the following be added to item 9: "Tr. Amenta expressed opposition to closing Capitol Drive during the event."

Tr. Rozek requested that the following be added to item 10.d.1: "Tr. Rozek asked that when board members are asked to approve future contracts that a term sheet be included."

Tr. Maher moved, seconded by Tr. Rozek to approve the amended September 19, 2016 Village Board minutes. Motion carried 7 – 0.

8. Citizens to be heard

Liz Jensen, 4117 N Woodburn, addressed the Board regarding a dog complaint that she had filed. She had questions about compliance with ordinances, including waiver procedures, and questions about complaint procedures.

9. Swearing in of Police Officers

Clerk-Treasurer O'Malley swore in Officer Cydney E. Weisflog, Officer Halston J. Wolber and Sergeant Theron T. Rogers.

10. Proclamation – Customer Service Week

President Johnson read the Proclamation declaring October 3 – 7, 2016 as Customer Service Week.

11. New Business

a. Public Safety

1. Ordinance to Amend the Residential Congested Commuter Area Parking District  
This matter was deferred to the October 17, 2016 Village Board meeting.

2. Consideration of approval of the construction management contract with Riley Construction Company for the Police Building at 4075 N Wilson  
This matter was deferred to the October 17, 2016 Village Board meeting.

b. Public Works

1. Consideration of Recommended bike share locations in the Village of Shorewood as part of the awarded Transportation Alternatives Program grant  
Tr. Amenta moved, seconded by Tr. McKaig to approve the recommended bike share stations as presented in the August 29, 2016 memorandum from RA Smith, with the amendment that station number 9 be located at Capitol and Downer instead of Atwater Park. Motion carried 7 – 0.

2. Review of Village of Shorewood and Bublr Bikes Term Sheet for bike share operations

This item will be deferred to the October 17, 2016 Village Board meeting.

12. Reports of Village Officials

a. Village President

President Johnson reported that he had attended the Fish and Feather event which was wonderful but unfortunately had low attendance due to the weather.

b. Village Trustees

Tr. McKaig reported that she had attended a Shorewood Foundation meeting, which included representatives from community charitable organizations, to discuss ways to partner in the future.

Tr. Rozek reported that the BID was halfway through the strategic planning process.

Tr. Maher reported that there was a Budget & Finance meeting the next day at 6:00 p.m.

Tr. Amenta reported that the Wilson Drive Task Force members had met with the consultant to express issues and concern and would be meeting again in December.

c. Village Manager

1. Update on Refuse Collection

Manager Swartz reported that staff was working to combine information in a manner that will help the board see how the proposals relate to the Budget. Information would be brought to the next two Board meetings, with a goal of having a decision by the end of November.

13. Items for Future Consideration

Tr. Rozek requested a discussion on the Central Business District Zoning Code in relation to the Master Plan.

Tr. McKaig requested that the JPL Committee and the C&BR Committee team up to explore diversity and welcoming initiatives. The JPL would review in regard to staff positions and the C&BR would review in regard to the Community.

Tr. McKaig requested the attorney to prepare a memo regarding quasi-judicial functions with regard to committees.

Tr. Amenta requested a joint meeting with the Design Review Board to review recent decisions and differing standards between residential and commercial projects. Manager Swartz indicated that they are working on modifying the Design Review standards.

Tr. McKaig requested an evaluation of the Camp Bar Packer party event.

Tr. Rozek requested discussing the purchasing of two additional video cameras for the Committee rooms.

Tr. McKaig requested that the Budget & Finance meeting be held in Court Room.

14. Closed Session

Tr. Zovic moved, seconded by Tr. Maher to convene into Closed Session at 8:52 pursuant to Wisconsin State Statute 19.85(1)(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility, more specifically discussion and possible consideration of employment separation agreement. Motion carried by roll call vote 7 – 0.

Tr. Maher moved, seconded by Tr. Bockhorst to reconvene into Open Session at 9:40 p.m. Motion carried by roll call vote 7 – 0.

Tr. Maher moved, seconded by Tr. McKaig to authorize Village staff to execute the employment separation agreement as presented. Motion carried 7 – 0.

15. Adjournment

Tr. Maher moved, seconded by Tr. Bockhorst to adjourn at 9:45 p.m. Motion carried 7 – 0.

Respectfully submitted,

Tanya O'Malley, WCPC  
Village Clerk-Treasurer

# MEMORANDUM



Date: October 3, 2016

To: Public Safety Committee  
Village Board

From: Chris Swartz, Village Manager

Re: Residential Congested Commuter Area Ordinance

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## BACKGROUND

Attached is an ordinance establishing a Residential Congested Commuter Area (RCA) on N. Prospect Avenue from E. Capitol Dr. to E. Jarvis St., and on N. Downer Avenue from E. Capitol Dr. to E. Jarvis St. This ordinance is a result of requests over the last several years to create a RCA zone due to the number of non-resident vehicles parking on these streets.

Over the course of several correspondences and in-person meetings with neighborhood residents, there was consensus on N. Prospect Ave. and N. Downer Aves. that establishing a RCA zone was supported. There was no consensus from residents on E. Jarvis and N. Stowell and they were not included in this ordinance. Before implementation of this amendment to the ordinance, we will work with E. Capitol Dr. businesses to ensure that they have availability of daytime parking for their employees.

## MOTION

To approve the amendment to Ordinance 2064, to amend the Residential Congested Commuter Parking District.

## ORDINANCE NO: 2064

## An Ordinance to Amend The Residential Congested Commuter Area Parking District

At a regular meeting of the Village Board of the Village of Shorewood, Milwaukee County, Wisconsin, held on this 3rd day of October, 2016, a quorum being present and a majority of the Board voting therefore, said Board does ordain as follows:

SECTION 1

That Subsection (I)(1) of Section 25, Residential parking permits, of Article VIII, Parking Limits and Regulations, of Chapter 500, Vehicles and Traffic, of the General Ordinances of the Village of Shorewood is hereby repealed.

SECTION 2

That Subsection (I)(1) of Section 25, Residential parking permits, of Article VIII, Parking Limits and Restrictions, of Chapter 500, Vehicles and Traffic, of the General Ordinances of the Village of Shorewood is hereby re-created to read as follows:

## I. Residential Congested Commuter Area.

(1) Pursuant to the authority of §349.13 (1)(g) Wis. Stats., and notwithstanding any other provisions of this Article regarding the creation of a residential parking district, a “Residential Congested Commuter Area” is established for the area of the Village of Shorewood bounded by E. Edgewood Avenue on the south, N. Lake Drive on the east, the north side of E. Capitol Drive between Lake Drive and Oakland Avenue, and the east side of N. Oakland Avenue on the west. Additionally, the area shall include N. Downer Avenue between E. Capitol Drive and E. Jarvis Street, and N. Prospect Avenue between E. Capitol Drive and E. Jarvis Street. The regulations set forth herein in this subsection I shall be applicable in the Residential Congested Commuter Area notwithstanding any other hourly parking restrictions set forth in this Article and whereby vehicles bearing valid resident-only parking permits issued pursuant to this subsection may be parked without regard to posted hourly parking prohibitions within the area.

SECTION 3

That wherever the Two Hour parking limits found in §500-19 of the General Ordinances of the Village of Shorewood apply to parking locations that are in the Residential Congested Commuter Area residential parking district they are hereby repealed and the Village Clerk is hereby authorized to make those changes to the Village Code.

SECTION 4

That wherever the One Hour parking limits found in §500-20 of the General Ordinances of the Village of Shorewood apply to parking locations that are in the Residential Congested Commuter Area residential parking district they are hereby repealed and the Village Clerk is hereby authorized to make those changes to the Village Code.

SECTION 5

That if any subsection, section or portions of this ordinance or the application thereof to any persons as enacted hereunder is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions hereof and the validity of the ordinance in all other respects shall not be affected thereby.

SECTION 6

That all ordinances or parts of ordinances conflicting with the provisions of this ordinance are hereby to such extent repealed.

SECTION 7

That this ordinance shall take effect and be in force from and after its passage and publication pursuant to law.

PASSED AND ADOPTED by the Village Board of the Village of Shorewood, Milwaukee County, Wisconsin, this 3rd day of October, 2016.

\_\_\_\_\_  
Guy Johnson, Village President

Countersigned:

\_\_\_\_\_  
Tanya O'Malley, Village Clerk



**Shorewood**

**MEMORANDUM**

Village Attorney's Office

Nathan J. Bayer  
William P. Dineen

**TO: Chris Swartz, Village Manager  
Village Trustees**

**FROM: Nathan Bayer, Village Attorney**

**DATE: October 13, 2016**

**RE: Proposed Final Contract for Construction Management Services  
with Riley Construction**

---

Enclosed please find a copy of the proposed final Agreement with Riley Construction for construction management services related to the Shorewood Police Department Renovation Project. As a framework, the Agreement utilizes a standard form created by the American Institute of Architects (AIA) for construction management services, and has been further modified to reflect the specific needs of this project.

The AIA forms are used industry wide in order to create a common framework under which construction managers and contractors operate, and are designed to address all contingencies that may arise during a construction project. The "AIA Document A132" constitutes the Agreement. However, Riley has also provided a copy of "AIA Document A232," because a few sections of A232 are incorporated into the Agreement by reference. Portions of the A232 document will also be included in Agreements with the construction contractors later on.

The Agreement defines Riley's obligations with respect to pre-construction services, construction phase services, and post construction services. Pre-Construction services primarily involve the following (found on p. 2-3 of the Agreement):

- Meeting with the Village to gain a thorough understanding of the project and budget, and working with the architect to complete final plans and specifications.

- **Working with the Village to develop appropriate construction phases and schedules under which all work will eventually be completed pursuant to Village budget planning.**
- **Working with an architect (Zimmerman) to facilitate development of two (2) schematic design alternatives based upon and consistent with the preliminary design development drawings, and designed to be constructed within the budget constraints as outlined herein.**
- **Working with an architect to facilitate development of color renderings (two interior, two exterior) of a selected schematic design.**
- **Working to develop schedules and deadlines for the multiple phases of the construction project, to be determined by the Village based upon budgeting parameters.**

**Construction phase services primarily consist of the following (found on p. 3 of the Agreement):**

- **Based upon final plans and specifications for the project, assisting in preparing invitations to bid and bid forms, including bid packages, for all final construction work to be bid pursuant to Wis. Stat. § 61.54 and Wis. Stat. § 62.15, so the Village can identify the lowest responsible bidders.**
- **Providing all necessary services in monitoring the work of construction contractors, including but not limited to verifying code compliance, adherence to land use restrictions, compliance with storm water requirements, fire department requirements and any other governmental/ regulatory requirements prior to proceeding to full design in the construction phase, and attending public meetings and/or meeting with regulatory officials as required for plan approvals.**
- **Determining appropriate design/construction contingencies and owner contingencies, and defining how they will be managed.**
- **Assisting the Village with issuing purchase orders for owner direct material purchases and preparing requests for payment.**
- **Developing a detailed construction schedule. Identify all phasing and sequencing required for the execution of the work. Insure that the schedule meets the needs of all major stakeholders and facility users.**

- **Advising the Village on material selection, construction means and methods and constructability issues. Advise on requirements to pre-purchase materials or issues necessary for maintaining schedule.**
- **Developing and implementing a quality control program.**
- **Providing project supervision and management.**
- **Providing a secured web site or FTP site which shall be capable of providing all project information to include, but not limited to: plans, specifications, submittals, correspondence, photos, reports, meeting minutes, schedules, pay applications and other documents as may be required.**
- **Implementing a safety program, both for the workers and for the users of the existing facilities during construction, and developing a site utilization plan for each phase of work, providing necessary separations between the construction activities and the ongoing operations of the facilities.**
- **Holding project meetings with the Village no less than twice monthly.**
- **Drafting monthly project reports.**
- **Developing and managing processes for monthly pay applications, direct-owner purchase invoicing, contingency use, change management and change order review and processing.**
- **Coordinating work with the Village's staff, vendors, suppliers and any direct contractors related to furnishings, fixtures, equipment and technology.**

**Post construction phase services are to include (found on p. 3 of the Agreement):**

- **Completing punch list work, commissioning, operations and maintenance manuals and owner training for each phase of work in conjunction with the turnover of those phases. Providing as-built drawings in both paper and electronic (both .pdf and .dwg) formats, and implementing a warranty process.**
- **Managing issuance of record drawings, operation manuals and warranties at conclusion of construction.**

**Section 4.4.2 states that the total cost for construction management services will be a percentage of the cost of the work, but not to exceed a maximum of \$162,751.20, based upon an estimated total project cost of \$1,000,000. There is also a Riley Construction “pre-construction services” fee of \$4,000.00 that will be waived once construction is complete. The cost also includes fees for Zimmerman Architectural Studio of Design for architectural work.**

**Finally, please note that the enclosed version has a watermark reading “draft” as well as some parenthetical notations that need to be removed by Riley using the proprietary software associated with AIA documents after final changes to the Agreement were made. Riley was not able to provide the cleansed version before the Village Board packet was to be assembled. However, the enclosed contains all final terms and conditions, and a “clean version” will be circulated prior to the Village Board meeting.**

### **SUGGESTED MOTION**

**I move to execute the Agreement with Riley Construction to provide Construction Management Services associated with the Shorewood Police Department Renovation Project at 4057 Wilson Drive.**

# DRAFT AIA® Document A132™ – 2009

## Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

**AGREEMENT** made as of the « » day of « » in the year « »  
(In words, indicate day, month and year.)

**BETWEEN** the Owner (Also referred to henceforth as the “Municipality” or “Village”):  
(Name, legal status, address and other information)

« Village of Shorewood »« »  
« 3930 N. Murray Avenue »  
« Shorewood, WI 53211 »  
« »

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

« Riley Construction Company, Inc. »« »  
« 11270 West Park Place »  
« Milwaukee, WI 53144 »  
« 414-359-0100 »

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

«Shorewood Police Department Renovation»  
« 4057 North Wilson Drive »  
« Shorewood, WI 53211 »  
28,620 SF renovation of existing AB Data building to outfit current building to be the new Shorewood police department HQ.

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

« same as contractor »« »  
« »  
« »  
« »

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

« Zimmerman Architectural Studios, Inc. »« »  
« 2122 West Mt. Vernon Avenue »  
« Milwaukee, WI 53233 »  
« 414-476-9500 »

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

This document is intended to be used in conjunction with AIA Documents A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232™-2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## TABLE OF ARTICLES

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

#### ARTICLE 1 THE CONTRACT DOCUMENTS

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

#### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The scope of services to be provided by the construction manager are as follows:

It is anticipated that the construction manager will create continuity during both the design and construction phases of work and assist the municipality in keeping the Project on time and on budget, while advising and assisting the municipality in awarding construction contracts to the lowest responsible bidders, pursuant to the public bidding process as dictated by Wis. Stat. § 61.54 and Wis. Stat. § 62.15, for the Shorewood Police Department Renovation Project.

1. Pre-Construction (Design Development) services provided in conjunction with the selected architect are to include:
  - a. Meet with the Village to gain a thorough understanding of the Project and budget.
  - b. Retain Zimmerman Architects to design and develop all final plans, specifications, and construction documents for the Project. The Contractor's contract with the architect shall specifically declare that it is being entered into for the benefit of, and on behalf of, the Owner. Contractor shall also work collaboratively with the architect and Owner to facilitate creation of full construction documents for all work which will be constructed under phase one budget parameters and phasing defined in the design development process. The Contractor shall also advise the Village if a structural, mechanical, electrical, or plumbing designers are needed after schematic design approval.
  - c. Develop appropriate construction phases and schedules under which all work will eventually be completed pursuant to Village budget planning.

- d. Facilitate development of two (2) schematic design alternatives based upon and consistent with the preliminary design development drawings created by Zimmerman Architectural Studios, Inc., and designed to be constructed within the budget constraints as outlined herein.
  - e. Facilitate development of color relevant renderings of a selected schematic design.
  - f. Develop schedules and deadlines for the multiple phases of the construction Project, to be determined by the Village based upon budgeting parameters.
  - g. Facilitate creation of full construction documents for all work which will be constructed under phase one budget parameters and phasing defined in the design development process. Advise Village if a structural, mechanical, electrical and plumbing designers are needed after schematic design approval.
2. Construction phase services are to include:
    - a. Assistance in preparing invitations to bid and bid packages based upon final Project plans and specifications, for all final construction work to be bid pursuant to Wis. Stat. § 61.54 and Wis. Stat. § 62.15, so the Village can identify and select the lowest qualified bidders.
    - b. Determination of appropriate design/construction contingencies and owner contingencies and define how they will be managed.
    - c. Development of a detailed construction schedule. Identify all phasing and sequencing required for the execution of the work. Insure that the schedule meets the needs of all major stakeholders and facility users.
    - d. Advising Village on material selection, construction means and methods and constructability issues. Advise on requirements to pre-purchase materials or issues necessary for maintaining schedule.
    - e. Development and implementation of a quality control program. Identify in advance any Village involvement in the submittal review process. Define a testing program and identify a scope and budget for testing services.
    - f. Provision of Project supervision and management. Supervision required during construction for this Project scope. The services of construction Project management and design contract administration will be per the requirements of the American Institute of Architects, and agreed upon in advance with the Village.
    - g. Provision of a secured web site or FTP site which shall be capable of providing all Project information to include, but not limited to: plans, specifications, submittals, correspondence, photos, reports, meeting minutes, schedules, pay applications and other documents as may be required.
    - h. Implementation of a safety program, both for the workers and for the users of the existing facilities during construction.
    - i. Facilitation of job status meetings involving the Project manager and the Village no less than twice monthly.
    - j. Preparation of monthly Project reports in a level of detail required by the Village to manage the Project, and at a level of detail which can be used as a communication tool for the Village.
    - k. Development and management of processes for monthly pay applications, direct-owner purchase invoicing, contingency use, change management and change order review and processing.
    - l. Coordination of work with the Village's staff, vendors, suppliers and any direct contractors related to furnishings, fixtures, equipment and technology.
  3. Post construction phase services to include:
    - a. Preparation of punch list, commissioning, operations and maintenance manuals and owner training for each phase of work in conjunction with the turnover of those phases. Provide as-built drawings in both paper and electronic (both .pdf and .dwg) formats. Implement a warranty process.
    - b. Provision of record drawings, operation manuals and warranties at conclusion of construction.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

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

<< >>

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

« »

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

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than «July 1<sup>st</sup>, 2017 »

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

- Stipulated Sum, in accordance with Section 4.2 below
- Cost of the Work plus the Contractor's Fee without a Guaranteed Maximum Price, in accordance with Section 4.3 below
- Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below. Based on the selection above, also complete either Section 5.1.4, 5.1.5 or 5.1.6 below.)

#### § 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price

§ 4.4.1 The Contract Sum is the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee.

§ 4.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

«Fixed fees for services rendered by the construction manager\*»

Riley Construction Company Preconstruction Services Fee: \$4,000\*\*

Zimmerman Architectural Studios Design Services Fee:..... \$5,000

Riley Construction Company General Conditions Fee:.....\$80,751.20

Riley Construction Company Construction Phase Fee:.....2.95% of the cost of work

Riley Construction Company Insurance Fee:.....0.75% of the cost of work

Zimmerman Architectural Studios Construction Phase Fee:..4% of the cost of work

\*The following fees have been assessed based on a total cost of work of approximately \$1,000,000. Should there be substantial deviation from this total cost of work the above fixed fees may need to be reassessed.

\*\*The Riley Construction Company Preconstruction Services Fee will be waived when construction is deemed to be substantially complete.

« »

#### § 4.4.7 Guaranteed Maximum Price

§ 4.4.7.1 The Contractor's Fee is guaranteed by the Contractor not to exceed « One Hundred Sixty Two Thousand Seven Hundred Fifty One Dollars and Twenty Cents (\$162,751.20) », subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

\*Upon development of construction documents by the architect, the guaranteed maximum price will be re-evaluated by the construction manager, whom shall then furnish a new guaranteed maximum price for review by the owner. Pursuant to the mutual agreement of the new guaranteed maximum price by the owner and construction manager, the guaranteed maximum price will be adjusted accordingly.  
(Insert specific provisions if the Contractor is to participate in any savings.)

« »

§ 4.4.7.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« The current guaranteed maximum price is based on a total of \$1,000,000 in construction costs. »

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

§ 5.1.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « thirty » ( « 30 » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

«Prime Rate published in the Wall Street Journal plus four percent (4%) per annum

### § 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price

§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner

§ 5.1.6.5 The Contractor shall assist the Owner with reviewing and approving payments to the Owner's subcontractors, and determining retainage held on those subcontractors.

### § 5.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2 of AIA Document A232-2009, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit A, Determination of the Cost of the Work when payment is on the basis of the Cost of the Work, with or without a Guaranteed Maximum payment; and
- .3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

« »

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Owner will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A232-2009, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

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

<< >>  
<< >>  
<< >>  
<< >>

## § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A232–2009, the method of binding dispute resolution shall be as follows:

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

Arbitration pursuant to Section 15.4 of AIA Document A232–2009.

Litigation in a court of competent jurisdiction.

Other: *(Specify)*

<< >>

## ARTICLE 7 TERMINATION OR SUSPENSION

### § 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2009.

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2009.

### § 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price

§ 7.2.1 Subject to the provisions of Section 7.2.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2009.

§ 7.2.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A232–2009; however, the Owner shall then only pay the Contractor an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Sections 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum, 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.

§ 7.2.3 If the Owner terminates the Contract for cause when the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, and as provided in Article 14 of AIA Document A232–2009, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A232–2009 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.2.

§ 7.2.4 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 7.2.5 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2009; in such case, the Contract Sum and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A232–

2009, except that the term 'profit' shall be understood to mean the Contractor's Fee as described in Sections 4.3.2 and 4.4.2 of this Agreement.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2009 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

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

« »Peter Nimmer  
« »  
« »  
« »  
« »  
« »

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

« »Ben Kossow  
« »  
« »  
« »  
« »  
« »

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

§ 8.6 Other provisions:

« »

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

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

§ 9.1.1 The Agreement is this executed AIA Document A132–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition.

§ 9.1.2 The General Conditions are AIA Document A232–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

## ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance as set forth in Article 11 of AIA Document A232–2009.

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

OWNER (Signature)

« »« »

(Printed name and title)

CONTRACTOR (Signature)

« »« »

(Printed name and title)

FORWARD

# DRAFT AIA® Document A232™ – 2009

## *General Conditions of the Contract for Construction, Construction Manager as Adviser Edition*

### for the following PROJECT:

Shorewood Police Department Renovation  
4057 North Wilson Drive  
Shorewood, WI 53144  
414-359-0100

### THE CONSTRUCTION MANAGER:

*(Name, legal status and address)*

« Riley Construction Company, Inc. »« »  
« 11270 West Park Place »  
« Milwaukee, WI 53144 »  
« 414-359-0100 »

### THE OWNER (Also referred to as the “Municipality” or “Village”):

*(Name, legal status and address)*

« Village of Shorewood »« »  
« 3930 N. Murray Avenue »  
« Shorewood, WI 53211 »

### THE ARCHITECT:

*(Name, legal status and address)*

« Zimmerman Architectural Studios, Inc. »« »  
« 2122 West Mt. Vernon Avenue »  
« Milwaukee, WI 53233 »  
« 414-476-9500 »

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

This document is intended to be used in conjunction with AIA Documents A132™-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

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

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

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

**§ 1.1.4 The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Multiple Prime Contractors and by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

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

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

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

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

### § 1.2 Correlation and Intent of the Contract Documents

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

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

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

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

**§ 1.5.1** The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect, 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 Article 4, the Construction Manager and the Architect do not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

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

### **§ 2.2 Information and Services Required of the Owner**

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

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

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, shall secure and pay for the building permit. If requested by the Owner, Construction Manager may secure the building permit on Owner's behalf.

**§ 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.

**§ 2.2.6** The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents.

### **§ 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 Construction Manager's and Architect's and their respective consultants' 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, after consultation with the Construction Manager. 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 plural term “Multiple Prime Contractors” refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner’s own forces, including persons or entities under separate contracts not administered by the Construction Manager.

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

§ 3.1.4 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 Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor’s notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall 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 instruction 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, the Construction Manager, and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, transmitted through the Construction Manager. 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 performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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

### **§ 3.4 Labor and Materials**

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

**§ 3.4.2** Except in the case of minor changes in the Work 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, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

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

### **§ 3.5 Warranty**

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

### **§ 3.6 Taxes**

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

### **§ 3.7 Permits, Fees, Notices, and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner, through the Construction Manager per Owner's direction, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

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

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents,

the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 5 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either 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, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

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

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

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

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

### **§ 3.9 Superintendent**

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

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect through the Construction Manager, the name and qualifications of a proposed superintendent. The Construction Manager 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 any of them require additional time to review. Failure of the Construction Manager 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 and the Construction Manager's review 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 schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction Manager's and Architect's approval. The Architect and Construction Manager'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 Construction Manager and 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 participate with other Contractors, the Construction Manager and Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project schedule.

### **§ 3.11 Documents and Samples at the Site**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Architect and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 Shop Drawings, Product Data and Samples**

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

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

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

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate 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 and Construction Manager is subject to the limitations of Sections 4.2.9 through 4.2.11. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

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

Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Multiple Prime Contractors.

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

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

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

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

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 Use of Site**

**§ 3.13.1** 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.

**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting 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's own forces or of other Multiple Prime 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's own forces or by other Multiple Prime Contractors except with written consent of the Construction Manager, Owner and such other Multiple Prime Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Multiple Prime Contractors or the Owner 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, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

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

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager and Architect harmless from loss on account thereof, but shall not be responsible for 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, Architect, or Construction Manager. 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 through the Construction Manager.

### **§ 3.18 Indemnification**

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

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

## **ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER**

### **§ 4.1 General**

**§ 4.1.1** The 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** The Owner shall retain a construction manager lawfully licensed to practice construction management or an entity lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

**§ 4.1.4** If the employment of the Construction Manager or Architect is terminated, the Owner shall employ a successor construction manager or architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

### **§ 4.2 Administration of the Contract**

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

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work.

**§ 4.2.3** The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Architect (1) known deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in the Work. The Construction Manager is not responsible for safety on the project and shall not be responsible to ensure that the work is being performed in a safe manner as this is the sole responsibility of the Contractor performing the work.

**§ 4.2.4** The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project schedule.

**§ 4.2.5** The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or charge of, 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, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

**§ 4.2.6 Communications 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 Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. 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 other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

**§ 4.2.7** The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

**§ 4.2.8** The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work. For the avoidance of doubt, the Contractor is not responsible to make sure the work is being performed in a safe manner. Regarding Construction Manager's responsibilities, in the event there is a conflict between this document and a Contract Document, this document shall prevail.

**§ 4.2.9** The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Architect those recommended for the Architect's and Owner's approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed them. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

**§ 4.2.10** The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

**§ 4.2.11** Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and 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.

§ 4.2.12 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7 and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.14 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.15 The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.16 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.

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

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

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

§ 4.2.20 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing to the Construction Manager to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and 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 Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager, 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, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner, Construction Manager 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 responsibility for safety of the Subcontractor’s Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## § 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

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

### **§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other 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 the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

**§ 6.1.3** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, 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's own forces, Construction Manager and other Multiple Prime Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Multiple Prime Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and 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 own forces or other Multiple Prime Contractors' 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, including costs that are payable to a separate contractor or to other Multiple Prime Contractors because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces or other Multiple Prime Contractors.

**§ 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, separate contractors, or other Multiple Prime Contractors as provided in Section 10.2.5.

**§ 6.2.5** The Owner and other Multiple Prime Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### **§ 6.3 Owner's Right to Clean Up**

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

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

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

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

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, 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**

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

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

### **§ 7.3 Construction Change Directives**

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

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

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

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

**§ 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 Construction Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 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 Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

#### **§ 7.4 Minor Changes in the Work**

The Architect 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 issued through the Construction Manager and shall be binding on the Owner and Contractor.

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

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

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

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

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

## **§ 8.2 Progress and Completion**

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

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

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

## **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, 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, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

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

### **§ 9.2 Schedule of Values**

Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, 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 Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager 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 Construction Manager and Architect, but not yet included in Change Orders.

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

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

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

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

**§ 9.4.2** Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

**§ 9.4.3** Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

**§ 9.4.4** The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

**§ 9.4.5** The Architect's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the

recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

**§ 9.4.6** The representations made pursuant to Sections 9.4.4 and 9.4.5 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager or Architect.

**§ 9.4.7** The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's 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 Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or 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 or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager and both will reflect such payment on the next Certificate for Payment.

### **§ 9.6 Progress Payments**

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

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

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

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and 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, Construction Manager 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 Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of 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 the Owner can occupy or utilize the Work for its intended use.

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

**§ 9.8.3** Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the requirements of the Contract Documents so that the Owner can occupy or utilize the Work or designated portion

thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

**§ 9.8.4** When the Architect, assisted by the Construction Manager, determines that the Work or designated portion thereof is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute a Certificate of Substantial Completion that shall establish the date of Substantial Completion, 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 and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

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

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

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with 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 Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment,

and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed 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 through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; 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. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. Additionally, the Construction Manager's responsibilities shall not extend to supervising the Contractor's work such that all safety precautions and programs in connection with the performance of the Contract have been followed.

### **§ 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;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 construction or operations by the Owner or other Contractors.

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

**§ 10.2.3** The Contractor shall 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, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, 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, Construction Manager 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 a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased 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, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

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

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

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

#### **§ 10.4 Emergencies**

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

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Liability Insurance**

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which 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; and
- .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 submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect 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 shall be furnished by the Contractor with reasonable promptness.

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

### **§ 11.2 Owner's Liability Insurance**

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

### **§ 11.3 Property Insurance**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's, Contractor's, and Construction Manager'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, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

**§ 11.3.3 Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

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

**§ 11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, adjoining 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 Construction Manager, 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 the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in

accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or distribution of insurance proceeds in accordance with the direction 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 Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation 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 which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, 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 one of the other Contractors 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 Construction Manager or 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 Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of 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 shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

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

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors or other Multiple Prime 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, Construction Manager, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed 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 Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

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

**§ 13.5.6** 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 the 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 the 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 Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner, Construction Manager 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, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

## **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors 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, after consultation with the Construction Manager, and 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 Construction Manager's and Architect's services and expenses made necessary thereby, and other damages

incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 Suspension by the Owner for Convenience**

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

**§ 14.3.2** The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption 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 this Contract.

#### **§ 14.4 Termination by the Owner for Convenience**

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

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

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

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

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

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

**§ 15.1.2 Notice of Claims.** Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Construction Manager and or 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 Construction Manager will prepare Change Orders and the Architect will issue a Certificate for Payment or Project Certificate 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 10.3.

### § 15.1.5 Claims for Additional Time

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

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

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

### § 15.4 Arbitration

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

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

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

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

**§ 15.4.4 Consolidation or Joinder**

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

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

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



**Shorewood**

**MEMORANDUM**

Village Attorney's Office

Nathan J. Bayer  
William P. Dineen

**TO:** Chris Swartz

**FROM:** Nathan J. Bayer

**DATE:** October 12, 2016

**RE:** BUBLR Bike Share "Term Sheet" and Final Operating Agreement

---

**The purpose of this memorandum is to explain and enclose the "Term Sheet" that has been created by BublR and the municipalities that will encompass the final bike share network in Milwaukee County.**

**By way of background, counsel for all the municipalities that will make up the completed BublR bike share system met in the spring of 2016 to collaboratively develop the terms that will eventually constitute the final "Operating Agreement" with BublR. This meeting was productive and everyone agreed to incorporate specific requests of myself and the other municipal attorneys.**

**Following the meeting, the enclosed "Term Sheet," which enumerated the main points to be incorporated in the final Agreement, was circulated. The final Operating Agreement will of course be much more detailed and address every possible contingency. Besides creating a system that operates smoothly, the other main purpose of the final Operating Agreement will be to protect each municipality from any liability or cost beyond the initial outlaw for the stations and equipment.**

**The parties agreed that Milwaukee, as the largest municipality in the group, would assume the task of completing the final Operating Agreement and then circulating it to all municipal attorneys for any final amendments or additions. However, Milwaukee has not yet finished that task. We are hopeful that it will be completed within the next few months. This does not create any delay for Shorewood, as it is only at the station site selection stage.**

**At committee meeting in September, there were some requests that the Term Sheet address what would happen if BublR ceased to exist, and also to expressly state that Shorewood has final say over the number of locations to be installed.**

**As you can see, both of these issues are addressed therein. If Bublr were to cease operations, the municipality would have the option of finding another entity to run the system, or forcing Bublr to remove all hardware and equipment at Bublr's expense.**

**Once the Operating Agreement is finalized, I can review and present it to the Village Board for consideration. However, if the Board wishes to act on the Term Sheet, it has the option of directing staff and the Village Attorney to enter into a final Agreement on terms consistent with those enumerated in the Term Sheet. Wauwatosa took this approach, because it has already reached the point of installing actual stations on the ground. Because Shorewood is only at the site selection stage, it has the option of waiting until the Agreement is finalized, and then taking action on that document. Either approach is acceptable.**



### Term Sheet for New Municipalities Added to System

BublR Bikes System	BublR Bikes is a regional public bike sharing system initiated within the City of Milwaukee. BublR Bikes has the capacity to expand into municipalities contiguous to the current system.
One, Seamless Public Transportation System	BublR Bikes will be operated and marketed as a completely integrated and interconnected system throughout its entire service area.
Equipment Provider	BCycle – a Wisconsin subsidiary of Trek Bicycles. BCycle was selected through two independent competitive public bids. A total of 9 equipment providers, from the United States, Spain and Germany, responded, and in the subsequent expansion phase competition, the City of Milwaukee negotiated improved terms for equipment acquisition.
Sole Operator	Midwest BikeShare Inc., is a nonstock corporation with 501(c)3 status, doing business as BublR Bikes. Midwest Bikeshare is the sole operator of the BublR Bike system (BublR® is Midwest Bikeshare’s registered brand and the system is operated under an exclusive license granted by BCycle). Midwest Bikeshare is dedicated to transparency with its partners and stakeholders and to maintaining a representative board.
Operating Agreement	BublR Bikes and the Municipality will enter in to an Operating Agreement which defines the terms of its relationship.
Station Equipment	Equipment purchases for stations may include bikes, kiosks, shared capital for operations, repair inventory and software licenses.
Station Locations	BublR and Municipality shall mutually agree to the location of all stations (kiosks and bikes) in the BublR network located within the Municipality. Station locations shall satisfy basic operating guidelines established by BublR.

Operations	Bublr will maintain the equipment in good working order and shall be responsible for any costs reasonably necessary to repair or replace equipment whether caused by normal wear and tear, vandalism, or theft.
Operating funding/support	Bublr is responsible for funding the considerable cost of operations through earned (user fees, advertising and sponsorship) and contributed (sponsorship and charitable) revenues.
<b>Capital Purchases and Funding</b>	
Bublr Owned Equipment	Bublr shall have the right to install and operate Bublr owned equipment within the municipality. This equipment will be placed at mutually agreed locations. Bublr will obtain any necessary Municipal permits but the municipality will waive all applicable permitting fees.
Installations	Equipment purchases by Bublr are supported by i) private sponsorship or fund development; and ii) TID and other public grants to Bublr.
Private Sponsorship	Bublr and Municipality will work cooperatively on private fundraising and state/federal funding and grant development. Private fundraising strategies and requests shall be initiated by Bublr or with Bublr's advance knowledge and consent.
Development Based Sponsorship/Grants	In appropriate locations, the Municipality will cooperate with Bublr to include station sponsorship in real estate development agreements and new tax increment districts.
Municipal Purchased Equipment	When available, a direct grant shall be made to Bublr for equipment purchases. Some funding sources and rules may not permit this and the Operating Agreement shall provide that the Municipality lease to Bublr all bikeshare equipment and licenses, (including computer hardware, software and technology licenses, stations, kiosks, docks, bicycles, bicycle locks, solar panels, power sources, and power cables) owned by the Municipality. The lease will provide that Bublr leases the equipment from the Municipality for the depreciable life of the equipment (5 years for bikes and 10 years for stations/kiosks). At the end of the lease, Bublr shall have the option to purchase the equipment for One Dollar (\$1) or for the remaining depreciable value if required by rule. The Municipality shall have the right to require Bublr to purchase equipment at any time for One Dollar (\$1).
Capital Lease to Bublr	
Capital Budgets and	Bublr is responsible for the cost to maintain equipment

Equipment Orders	<p>purchased by the Municipality.</p> <p>BublR and Municipality shall mutually agree on the details of capital budgets and equipment orders for all stations and bicycles purchased by the Municipality for BublR's expansion within the Municipality.</p>
Final Station Number	The final number of stations installed using either municipal funding or funding and/or grants awarded to a municipality shall be determined at the municipality's discretion.
<b>Brand, Sponsorship and Communication</b>	
Branding, Marketing and Communication	All branding, marketing and customer communication is the sole responsibility of BublR. BublR shall remain the sole owner of the BublR brand and trademark. BublR grants to the Municipality a limited license to use the BublR trademark, subject to use guidelines.
Presenting Sponsor	BublR will seek a single Presenting Sponsor to support system operations and expansions. BublR Bikes is solely responsible for attracting and deciding upon a Presenting Sponsor. BublR Bikes retains all revenue earned from a Presenting Sponsor.
Advertising and Sponsorship	BublR has sole responsibility and the right to sell and place advertising and sponsorship on the bikes and at any station placed within the Municipality. Municipality grants the right to BublR to promote sponsors on BublR equipment and shall diligently pursue such approvals, at no cost to BublR, as are needed to fulfill this grant of rights. BublR retains all advertising and sponsorship revenue to support system operation and expansion.
Media	BublR and Municipality will coordinate on proactive and reactive media opportunities. The Municipality will assign personnel, if it desires, to speak to BublR Bikes' function with the Municipality.
<b>Other Stuff</b>	
Reporting	BublR will provide regular and relevant reporting on network performance and function, based on reasonably available data.
Property Taxes	BublR anticipates being exempt from property taxes (including personal property taxes). Municipality shall not object to any request for exemption.
Indemnity	<p>BublR will indemnify and hold harmless Municipality, all their officers, agents and employees, from and against any and all losses, claims, damages, expenses and suits in law or equity arising from BublR's use and operation of the bikeshare equipment covered by this Agreement.</p> <p>Municipality will indemnify and hold harmless BublR, all its</p>

	officers, agents and employees, from and against any and all losses, claims, damages, expenses and suits in law or equity arising from Municipality's negligence or willful misconduct in the installation or other operation of the bikeshare equipment covered by this Agreement.
Insurance	BublR will maintain sufficient insurance, including general liability (\$2,000,000), worker's compensation (statutory), umbrella (\$1,000,000) and auto liability (\$1,000,000).
Cessation of Operations	Notwithstanding any of the foregoing, if for whatever reason, BublR ceases to operate the bikeshare system installed in a municipality, the municipality may at its election either: find a new operator for the equipment; or require bublr to remove all equipment/stations at BublR's sole expense.

## MEMORANDUM

October 12, 2016

To: Trustee Davida Amenta, Chairperson  
Public Works Committee



From: Leeann Butschlick, Director of Public Works  
Mark Emanuelson, Finance Director

Copy: Village Board  
Chris Swartz, Village Manager  
Joel Kolste, Assistant DPW Director

Re: collections update

---

Your October 17 meeting of the Village Board includes discussion regarding the collections review process.

### **Cost Analytics and Details**

Please find attached additional cost data as prepared by Mark Emanuelson, Finance Director. Mr. Emanuelson will present this information at your meeting Monday evening.

For your reference, the several level alternatives referenced in the attached are defined below:

*Full Automation* – Karts required for refuse and recycling; both refuse and recycling collected from curb only, no alley service; no items outside karts.

*Current Service Level* – Refuse karts are collected from curb or alley; recycling is collected curbside only from karts or bins; no items outside kart/bins permitted.

*Enhanced Alley Service* – Karts only; refuse AND recycling are collected from the alley if one exists; no items outside the karts.

If you should have any questions in advance of the meeting, please do not hesitate to contact Mark at 847.2607 or me at 847.2650.

## Village refuse costing analytics

### Current Practices

#### **LABOR:**

3 Trucks operating for 5 hours per day for 3 days per week = 45 hours of collection time per week

Refuse is collected weekly, so total annual hours are 52 weeks times 45 hours per week = 2,340 hours

- The average refuse operator pay rate is \$25.00 per hour
- The average direct fringe benefit costs are \$20.00 per hour (total fringe benefit costs / total hours)
- The average DPW administrative supervision costs are \$10.00 per hour (DPW operations regular wages / 50% DPW administrative costs / refuse labor hours = \$10.00 administrative costs per operations hour)

Total annual refuse labor related costs:

$$(2,340 \times \$25) + (2,340 \times \$20) + (2,340 \times \$10.00) = \mathbf{\$128,700}$$

OPERATOR                      OPERATOR                      ADMINISTRATIVE

#### **EQUIPMENT:**

Equipment costs have 3 components; maintenance, fuel, and acquisition costs. Staff has estimated these costs based on the type of anticipated replacement equipment that would be needed to continue to provide the various service scenarios. The equipment costs for the current collection scenario were estimated as follows:

- Annual maintenance costs: \$7,020 (2,340 hours of operation X \$3.00 per hour lifetime average)
- Annual fuel costs: \$7,000 (6,000 route miles per year @ 3.0 MPG X \$3.50 per gallon fuel)
- Annual acquisition costs: \$54,500 (total cash costs + 30% financing costs / 10 year service life X 65% usage for household refuse collections purposes)

Total annual refuse vehicle related costs:

$$\$7,020 + \$7,000 + \$54,500 = \mathbf{\$68,520}$$

This was then converted into an hourly rate to help analyze other service level options.

$$\$68,520 / 2,340 \text{ hours} = \$29.28$$

Compactor and supplies = **\$6,000** per year based on similar cost analysis

#### **DISPOSAL FEES:**

Disposal fees were calculated based on the community average disposal tonnage and anticipated costs.

Total annual disposal fees:

$$2,500 \text{ average tons} \times \$46.25 \text{ per ton} = \mathbf{\$115,625}$$

#### **TOTALS:**

Total estimated village cost to provide services: **\$318,848**

$$\$128,700 + \$68,520 + \$6,000 + \$115,625 = \$318,848$$

## NOT included in Village cost estimates

The preceding page outlined the process staff used to assign a village cost for comparative purposes to external bids for equivalent services. These are the most direct and readily determined costs related to this activity.

But there are also a number of other, more general “costs” that an equivalent external business operation would have to build in to their fees to cover their overall operational expenses. For example:

- Facility costs for direct administrative and operations staff
- Facility costs for operations activities (yard use, vehicle storage, fueling stations)
- Facility maintenance costs
- Administrative support costs for organizational management (Village Manager, HR, Finance, Fleet services, customer service)
- Return on investment margins / profit

While these costs could add significant amounts to external bids, none of these costs are readily determinable within the village under existing accounting methods and due to the variety of services we provide. In addition, none of these costs are likely to change based on the decision on whether or not we contract out these services.

## Potential Savings - Option #1 ONLY

Previously staff has provided an estimate that the village spends \$318,848 per year on refuse collection activities at current service levels. However, it is essential to understand that this is not the amount of money that could be “saved” if these services were outsourced.

**Labor:** The 2,340 hours of direct operator labor attributed to refuse collection is equivalent to slightly more than 1 FTE staff output. 1FTE staff equates to approximately \$90,000 in salaries and benefits if these services were no longer needed. The remaining staff time and supervision costs would be redistributed to other areas.

**Disposal fees:** The disposal fees of \$115,625 would be eliminated and be part of the outsourced contract costs.

**Equipment Costs:** Depending on the comprehensive service decisions made by the Village Board related directly to household refuse collection AND other refuse and yard waste services will determine the actual number and type of replacement vehicles that the village will need to purchase.

Dependent on the services that will need to continue to be provided by the village, these costs will likely be reduced by about \$25,000 per year per vehicle not required. This is due to the fact that the useful life of the equipment will also likely be extended, which will reduce the per vehicle costs over time.

The most likely outcome would therefore be a cost reduction of about **\$230,000** (\$90,000 + \$115,000 + \$25,000) Conversely, about \$85,000 of costs would still be incurred by the village to support other service areas.

## Option 1 - Best price / Outsource both

		<u>Bi-Weekly Recycle</u>	<u>Weekly Recycle</u>
	<u>Current Contracts / costs</u>	<u>Full Automation</u>	<u>Full Automation</u>
Household refuse by Village	\$ 318,848	\$ 304,013 Advanced	\$ 312,039 Johns
Recycling by WM (all)	\$ 172,420	\$ 154,285 Advanced *	\$ 216,328 Johns *
Recycling rebates	\$ (45,000)	\$ (40,000) projected	\$ (40,000) projected
	<u>\$ 446,268</u>	<u>\$ 418,298</u>	<u>\$ 488,367</u>
<b>Cost change from current</b>	<b>\$ -</b>	<b>\$ (27,970)</b>	<b>\$ 42,099</b>
School & Municipal refuse	\$ 12,600	\$ - included	\$ 9,150
Street / Park can collection	\$ 31,200	\$ - included	\$ - included
Bagged Yard Waste (weekly)	\$ 78,500	\$ 78,500 No Bid	\$ 101,500
Brush collection (monthly)	\$ 35,000	\$ 35,000 No Bid	\$ 35,850 (weekly)
Bulk item pick-up	\$ 18,000	\$ 10,500	\$ 14,700
	<u>\$ 175,300</u>	<u>\$ 124,000</u>	<u>\$ 161,200</u>
	<u>Current Contracts / costs</u>	<u>Current Service</u>	<u>Current Service</u>
Household refuse by Village	\$ 318,848	\$ 366,093 Johns	\$ 366,093 Johns
Recycling by WM (all)	\$ 172,420	\$ 193,921 Johns *	\$ 266,477 Johns *
Recycling rebates	\$ (45,000)	\$ (40,000) projected	\$ (40,000) projected
	<u>\$ 446,268</u>	<u>\$ 520,014</u>	<u>\$ 592,570</u>
<b>Cost change from current</b>	<b>\$ -</b>	<b>\$ 73,746</b>	<b>\$ 146,302</b>
School & Municipal refuse	\$ 12,600	\$ 9,150	\$ 9,150
Street / Park can collection	\$ 31,200	\$ - included	\$ - included
Bagged Yard Waste (weekly)	\$ 78,500	\$ 101,500	\$ 101,500
Brush collection (monthly)	\$ 35,000	\$ 35,850 (weekly)	\$ 35,850 (weekly)
Bulk item pick-up	\$ 18,000	\$ 14,700	\$ 14,700
	<u>\$ 175,300</u>	<u>\$ 161,200</u>	<u>\$ 161,200</u>
	<u>Current Contracts / costs</u>	<u>Enhanced Alley</u>	<u>Enhanced Alley</u>
Household refuse by Village	\$ 318,848	\$ 341,523 Johns	\$ 341,523 Johns
Recycling by WM (all)	\$ 172,420	\$ 201,390 Johns *	\$ 232,333 Johns *
Recycling rebates	\$ (45,000)	\$ (40,000) projected	\$ (40,000) projected
	<u>\$ 446,268</u>	<u>\$ 502,913</u>	<u>\$ 533,856</u>
<b>Cost change from current</b>	<b>\$ -</b>	<b>\$ 56,645</b>	<b>\$ 87,588</b>
School & Municipal refuse	\$ 12,600	\$ 9,150	\$ 9,150
Street / Park can collection	\$ 31,200	\$ - included	\$ - included
Bagged Yard Waste (weekly)	\$ 78,500	\$ 101,500	\$ 101,500
Brush collection (monthly)	\$ 35,000	\$ 35,850 (weekly)	\$ 35,850 (weekly)
Bulk item pick-up	\$ 18,000	\$ 14,700	\$ 14,700
	<u>\$ 175,300</u>	<u>\$ 161,200</u>	<u>\$ 161,200</u>

\* For comparative purposes, \$20,000 has been added to each household bid to account for other supplemental recycling services such as street can collection, school & municipal pick-up, and DPW yard roll-off containers.

## Option 2 - Best price / split services

		Bi-Weekly Recycle		Weekly Recycle
	<u>Current Contracts / costs</u>	<u>Full Automation</u>		<u>Full Automation</u>
Household refuse by Village	\$ 318,848	\$ 241,792 Village		\$ 241,792 Village
Recycling by WM (all)	\$ 172,420	\$ 154,285 Advanced *		\$ 216,328 Johns *
Recycling rebates	\$ (45,000)	\$ (40,000) projected		\$ (40,000) projected
	<u>\$ 446,268</u>	<u>\$ 356,077</u>		<u>\$ 418,120</u>
<b>Cost change from current</b>	<b>\$ -</b>	<b>\$ (90,191)</b>	<b>\$ (13,135)</b>	<b>\$ (28,148)</b> \$ 48,908
	<u>Current Contracts / costs</u>	Bi-Weekly Recycle		Weekly Recycle
		<u>Current Service</u>		<u>Current Service</u>
Household refuse by Village	\$ 318,848	\$ 318,848 Village		\$ 318,848 Village
Recycling by WM (all)	\$ 172,420	\$ 156,576 Waste Mgmt *		\$ 266,477 Johns *
Recycling rebates	\$ (45,000)	\$ - none **		\$ (40,000) projected
	<u>\$ 446,268</u>	<u>\$ 475,424</u>		<u>\$ 545,325</u>
<b>Cost change from current</b>	<b>\$ -</b>	<b>\$ 29,156</b>	<b>\$ 29,156</b>	<b>\$ 99,057</b> \$ 99,057
		<i>2017 Status Quo Bid</i>		
	<u>Current Contracts / costs</u>	Bi-Weekly Recycle		Weekly Recycle
		<u>Enhanced Alley</u>		<u>Enhanced Alley</u>
Household refuse by Village	\$ 318,848	\$ 280,794 Village		\$ 280,794 Village
Recycling by WM (all)	\$ 172,420	\$ 189,653 Waste Mgmt *		\$ 232,333 Johns *
Recycling rebates	\$ (45,000)	\$ - none **		\$ (40,000) projected
	<u>\$ 446,268</u>	<u>\$ 470,447</u>		<u>\$ 473,127</u>
<b>Cost change from current</b>	<b>\$ -</b>	<b>\$ 24,179</b>	<b>\$ 62,233</b>	<b>\$ 26,859</b> \$ 64,913

\* For comparative purposes, \$20,000 has been added to each household bid to account for other supplemental recycling services such as street can collection, school & municipal pick-up, and DPW yard roll-off containers.

\*\* Waste Management has bid their costs net of any recycling rebates

## Comparative tables based on annual residential costs of service levels provided towards household collections

Status Quo services	tax impact on \$300K home		effort impact to residents	
Current costs *	\$92.92 / <b>\$98.96</b>	n/a	same	same

\*Current costs are \$92.92 per household based on the \$445,268 estimate. However, 2017 costs will change to \$98.96 upon execution of the renewal contract with Waste Management.

Option 1 - Outsource both	tax impact on \$300K home		effort impact to residents	
<u>Service Level Alternative</u>	<u>biweekly recycle</u>	<u>weekly recycle</u>	<u>no alley</u>	<u>with alley</u>
Full Automation	\$87.08	\$101.67	same	more
Current service	\$108.33	\$123.44	same	same
Enhanced Alley	\$104.79	\$111.25	same	less

Option 2 - Split services	tax impact on \$300K home		effort impact to residents	
<u>Service Level Alternative</u>	<u>biweekly recycle</u>	<u>weekly recycle</u>	<u>no alley</u>	<u>with alley</u>
Full Automation	\$74.17	\$87.08	same	more
Current service	<b>\$98.96</b>	\$113.54	same	same
Enhanced Alley	\$97.92	\$98.54	same	less



AT THE EDGE OF THE CITY AND  
THE HEART OF EVERYTHING

## FINANCE DIRECTOR'S MEMO

October 17, 2016

TO: Village Board/Finance Committee  
FROM: Mark Emanuelson, Finance Director  
RE: CDA Memorandum of Understanding (MOU)

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In anticipation of the upcoming transfer of funds from the Village's TID #1 to the Community Development Authority (CDA) to support future CDA activities, as approved by the Village Board on February 17, 2016, a number of administrative issues will need to be delineated to ensure that the relationship between the Village and CDA is adequately defined for purposes of compliance with Generally Accepted Accounting Principles (GAAP) as well as auditing and financial reporting compliance.

This MOU will pertain only to the Village's relationship with the CDA as related to the funds transferred to the CDA. Any other CDA activities outside of the scope and purpose of these fund transfers, including any items related to TID's 3, 4, or 5 not previously approved by the Village Board, will continue to be presented to the Village Board for approval through recommendations from the CDA.

These issues are being addressed by the CDA in this draft of the joint MOU which has been attached for your review. Once approved by the CDA, this item will be presented to the Village Board for their consideration and approval as well.

Sincerely,

Mark Emanuelson, CPFO  
Finance Director  
Village of Shorewood

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
VILLAGE OF SHOREWOOD  
AND  
THE COMMUNITY DEVELOPMENT AUTHORITY OF THE VILLAGE OF SHOREWOOD**

This Memorandum of Understanding ("MOU") is made effective the 7<sup>th</sup> day of November, 2016 by and between the Village of Shorewood (the "Village") and the Community Development Authority of the Village of Shorewood (the "CDA"). Referenced together the Village and the CDA are the "Parties" to this agreement. **This agreement pertains only to the funding of the CDA that is contemplated under this MOU.**

**RECITALS**

**WHEREAS**, at the February 17, 2016 Village Board meeting, the Village has approved the transfers (grants) of \$838,500 from TID #1 to the CDA; and

**WHEREAS**, these transfers were conditional upon review of an updated TID #1 pro forma using the 2016 assessment data that confirms that the TID #1 will still have the capacity to close in 2021 if these transfers were to occur; and

**WHEREAS**, Ehlers has updated the TID pro forma using 2016 data on analysis date 9/7/16 which confirms that TID #1 will still have the capacity to close in 2021 with these transfers. These pro forma are attached as exhibit 1; and

**WHEREAS**, the presentation of these pro forma to the Village Board with this MOU satisfies the conditional requirements of the February 17, 2016 motion approving these grant transfers, and

**WHEREAS**, these transfers were authorized, **and must be maintained by the CDA**, for the following conditional purposes: \$330,000 for future Façade Program expenditures in accordance with the CDA's Façade Program guidelines as approved by the Village Board. ~~which is attached as exhibit 2.~~ \$200,000 to fund the establishment of a perpetual business district-wide Business Loan Program in accordance with the CDA's Business Loan Program as approved by the Village Board. ~~which is attached as exhibit 3.~~ \$308,500 to support other future recurring CDA overall economic development strategies not specifically related to any other TID as identified on page B-5 of the CDA's 2015 Annual Financial Report and fiscal plan dated February 10, 2017 and accepted by the Village Board on February 17, 2016. A copy of page B-5 of this report is attached as exhibit 2, and

**WHEREAS**, consistent with the CDA establishing a perpetual business district-wide Business Loan Program, as identified on page H-2.2 of the CDA's 2015 Annual Financial Report and fiscal plan dated February 10, 2017 and accepted by the Village Board on February 17, 2016, the Village will be transferring to the CDA all remaining receivable balances relating to any existing business incentive loans that had previously been issued under this program. A copy of page H-2.2 of this report is attached as exhibit 3,

**WHEREAS**, the CDA was established on August 2, 1993 by the Village as a separate body politic to carry out their mission as authorized, and in accordance with Wisconsin Statutes, and

**WHEREAS**, with the transfer of these funds from the Village to the CDA to support future CDA activities, there are a number of administrative issues will need to be delineated through this MOU to ensure that the relationship between the Parties is adequately defined.

**NOW THEREFORE**, the Parties do herewith, in consideration of mutual promises and other good and valuable considerations, and upon joint adoption hereby agree as follows:

## **AGREEMENT**

- 1) **Incorporation by reference.** All of the “whereas” clauses and referenced exhibits contained in the Recitals are incorporated herein by reference and made part of this agreement.
- 2) **Fiscal Agent.** The Parties agree that the Village will act as the fiscal agent for the CDA and the Village will establish a separate special revenue fund within the Village’s chart of accounts in order to record the transactions of the CDA. All CDA funds will be held in the Village’s general checking account and will be readily available to support CDA activities.
- 3) **Internal Controls.** With the Village acting as the fiscal agent of the CDA, the CDA agrees that the Village will establish, and the CDA will adhere to, the appropriate internal controls and processes that will be necessary to process transactions and generate accurate financial reporting information consistent with the application of the Generally Accepted Accounting Principles as promulgated by the Governmental Accounting Standards Board. The Village’s role as fiscal agent shall be limited to these matters. All CDA contracts for services of \$5,000 or more must be in writing and approved by the CDA in order to satisfy Village’s internal control requirements.
- 4) **Cost Allocations.** The CDA will specify in any contract for general business district-wide services the percentage of the benefits for these services that will be attributable to any existing TID’s and to the CDA for the purpose of allocating contract costs. ~~The Village deems that 10% for each open TID and the remainder to the CDA is an acceptable allocation for business district wide CDA activities.~~
- 5) **Oversight.** The CDA shall have the overall responsibility of managing any CDA funded program. The CDA shall also have the responsibility of developing and approving its own budget, managing all issues of budgetary compliance, as well as supervising and approving any bidding, purchasing, or contracting for any other services for CDA activities not explicitly provided for in this agreement. In addition the CDA shall establish written processes for approval of any disbursements of CDA funds.
- 6) **Audit.** The CDA, as a component unit of the Village of Shorewood, will also be responsible for conducting an annual financial audit as appropriate for governmental financial reporting, as well as any federal or state reporting that may be required by law. The Village agrees to facilitate the CDA’s audit as part of the Village’s annual audit engagement and support any required federal or state reporting requirements in a manner consistent with that of the Village.
- 7) **Liability.** The Parties agree that the Village will name the CDA as an additionally insured party on the Village’s general liability insurance policy.

- 8) **Loan Balance Transfers.** The Village agrees to attend to any loan document modifications or other due diligence that may be required to relating to the transfers of the existing Business Improvement loans and balances from receivables of the Village, to receivables of the CDA.
- 9) **Compensation.** As compensation to the Village for the staff time used to assist the CDA in matters relating to the ongoing implementation of the Façade Grant Program and Business Improvement Loan Program as these plans are currently drafted, as well as for the agreed upon fiscal agent and other staff services identified in this agreement, the village will bill the CDA an annual flat fee of \$7,700 which is consistent with the anticipated Village costs previously identified in exhibit 2 ~~4~~. Additionally, as compensation to the Village for the extended professional audit services for the CDA annual audit, the CDA agrees to reimburse the Village the incremental cost of those services.
- 10) **Miscellaneous.**
  - a) Any modifications of this MOU must be in writing and signed by all Parties.
  - b) Any modifications to the Façade Grant Program or Business Improvement Loan Program must be approved by all Parties.

**SIGNATURES**

**IN WITNESS WHEREOF,** the parties hereto have caused the execution of the Memorandum of Understanding by authority of their respective bodies effective as of the date first above written once the parties have affixed their respective signatures.

**VILLAGE OF SHOREWOOD**

by \_\_\_\_\_ Date \_\_\_\_\_  
 Guy Johnson, Village President

by \_\_\_\_\_ Date \_\_\_\_\_  
 Tanya O'Malley, Village Clerk / Treasurer

**COMMUNITY DEVELOPMENT AUTHORITY  
 OF THE VILLAGE OF SHOREWOOD**

by \_\_\_\_\_ Date \_\_\_\_\_  
 Peter Hammond, CDA Chair

by \_\_\_\_\_ Date \_\_\_\_\_  
 Tanya O'Malley, Village Clerk / Treasurer



AT THE EDGE OF THE CITY AND  
THE HEART OF EVERYTHING

## VILLAGE CLERK'S MEMO

DATE: October 13, 2016

TO: Trustee Ann McKaig, Chair of the Judiciary, Personnel and Licensing Committee  
Judiciary, Personnel and Licensing Committee

FROM: Tanya O'Malley, Village Clerk/Treasurer

Re: Interviews for Village Boards, Commissions, and Committees

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### BACKGROUND

On May 16, 2016, the Judiciary, Personnel and Licensing (JP&L) Committee, directed the Village Clerk to begin scheduling interviews for filling upcoming/existing vacancies on Village Boards, Committees, and Commissions. The JP&L conducted interviews on June 6, 2016, June 16, 2016, June 20, 2016, July 20, 2016, September 6, and September 19, 2016.

### INTERVIEW SCHEDULE

The following interviews have been scheduled:

**October 17, 2016**

6:15 p.m. – Paul Krechel

**November 7, 2016**

5:45 p.m. – Lisa Even

6:00 p.m. – Elisabeth Witt

Applications for these individuals can be found in the dropbox folder or are available upon request from the Village Clerk-Treasurer.

### INTERVIEW QUESTIONS

There are four general questions that have been used to facilitate discussion. The questions are as follow:

1. Have you reviewed the mission and objectives of the committee you have applied for and do you have any questions about them? (If the applicant has not reviewed them, the chair or liaison provides a brief overview.)
2. Explain the relationship between committee and the Village Board and community. In essence, there can and will be differences of opinion, but the goal of serving the greater good is the same. The committee takes on different tasks and can be guided by an adopted plan. The tasks include advising the Village Board, prioritizing objectives, proposing or implementing initiatives related to the adopted plan or committee's will, volunteering for different activities to connect with community. Are these relationships and tasks of interest to you?
3. What is your personal work or communication style when participating in a group? Have you had experience on committees and what have you found to be the biggest challenges and/or accomplishments?
4. Are you still interested? Do you need more information?

**VACANCIES**

Attached is an updated listing of current vacancies on the various Village Boards, Committees, and Commissions.

**RECOMMENDATIONS**

If appropriate, direct the Village Clerk-Treasurer to schedule additional interviews

If appropriate, direct the Village Clerk-Treasurer to place specific appointments on an upcoming agenda for JP&L and Village Board consideration

Village Boards, Committees, and Commissions

<b>Committee</b>	<b>Number of Vacancies</b>	<b>Notes</b>
Board of Appeals	0	
Board of Review	3	1 Regular - Expiration 2020 1 Alternate - Expiration 2018 1 Alternate - Expiration 2017
Community Development Authority	0	
Conservation Committee	1	1 - Expiration 2019
Design Review Board	1	1 - Expiration 2019
Elder Services Advisory Board	2	2 - Expiration 2019
Library Board	0	
Parks	0	
Ped & Bike Safety	0	
Plan Commission	0	
Police	1	1 - Expiration 2021
Public Art Committee	1	1 - Expiration 2019
Recreation Advisory Committee	1	1 - Expiration 2019



**Shorewood**

**MEMORANDUM**

**Village Attorney's Office**

Nathan J. Bayer  
William P. Dineen

**TO:** Chris Swartz, Village Manager  
**FROM:** Nathan Bayer, Village Attorney  
**DATE:** September 1, 2016  
**RE: Quorums for Committees and Boards**

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I was asked to prepare a short memorandum addressing quorum requirements with respect to citizen boards and committees. In order to create a convenient reference guide I am also including a brief discussion of the standing committees established by the Village Board pursuant to Shorewood Village Code § 155-9.

Most of the village ordinances establishing committees and boards specifically address the number of members necessary to form a quorum in order to hold meetings and conduct business, and these are addressed below. Where no number is specified, or where any ambiguity arises, the default number to constitute a quorum is a simple "majority" of the number of members of that committee or board. Wisconsin Statute § 99.001(8)(m) dictates that when no other number is specified "a quorum of a public body is a majority of the number of members fixed by law." This is also consistent with Robert's Rules of Orders, which the board adheres to pursuant to Village Code § 155-7.

My understanding is the request for a primer on "quorums" arose primarily over concerns that the Design Review Board has had difficulty gathering enough members to constitute a quorum. The good news is that the code section setting up the Design Review Board offers some creative ways in which a quorum may be convened. For starters, even though the Design Review Board shall consist of nine members, Village Code § 225-12 states that only four members of the Board constitutes a quorum. Beyond that, under certain conditions, *former* members of the Board can attend meetings in order to reach a quorum. Village Code § 225-12(C) authorizes "3 former members of the Design Review Board" to "serve as alternate members pursuant to subsection D(4) of this section." Village Code § 225-12(D)(4) further provides that "In the event that there are at least 3 [active] members present, a specified former member may serve as a voting member for the purpose of providing a quorum to conduct the meeting." Thus, in a situation where only three of the nine active members of the Design Review Board can attend a meeting, a former member previously designed as an "alternate member" can be contacted, attend a meeting, and even vote.

Some questions have also recently arisen with respect to the Wilson Drive Task Force and its subgroups. The individuals that comprise the Task Force and subgroups are citizen volunteers who have agreed to give advice and make recommendations to the Strategic Initiatives Committee ("SIC"), which is a standing committee of the Village Board. The Task Force and the subgroups have no power to take direct action on behalf of either the SIC or the Board. Accordingly, the SIC can establish whatever rules it deems fit to govern meetings of the Task Force and its subgroups. The Task Force and the subgroups could meet and confer with less than a majority, unless the SIC has promulgated a rule dictating that a quorum is necessary to meet. Absent that, there is no minimum number to meet. Pursuant to our previous discussions, we do recommend that all meetings of the Task Force and subgroups continue to be publicly noticed and open to the public.

Village Code § 155-9 establishes the following six standing committees of the Village Board: Community and Business Relations, Budget and Finance, Public Works, Strategic Initiatives, Judiciary, Personnel and Licensing, and Public Safety. As there are only three appointed members on each of these committees, two members constitute a quorum. However, even though the Village President and Village Manager are also listed as "ex officio" members of all standing committees, as well as all special committees, commissions and boards, their attendance should not be counted in determining whether a quorum exists. Also, the Village President and Village Manager should not vote on any committee or board on which they are acting only as "ex officio" members.

The Village Code also enumerates the specific number of members that must be present at a meeting to constitute a quorum for the following boards and committees:

Pursuant to Village Code § 16-4, the Traffic Safety Committee shall have 8 members, and 5 shall constitute a quorum.

Pursuant to Village Code § 16-21, the Pedestrian and Bicycle Safety Committee shall have 7 members, and 4 shall constitute a quorum.

Pursuant to Village Code § 16-22, the Public Arts Committee shall have 7 members, and 4 shall constitute a quorum.

Pursuant to Village Code § 26-3, the Community Relations Committee have 9 members, and 5 shall constitute a quorum.

Pursuant to Village Code § 68-15, the Board of Review shall have 5 members, and 3 shall constitute a quorum.

Pursuant to Village Code § 125-2, the Civil Service Commission shall consist of 5 members, and 3 shall constitute a quorum.

Pursuant to Village Code § 530-3, the Library Board shall have 7 members, and 4 shall constitute a quorum.

Pursuant to Village Code § 535-54, the Board of Appeals shall have 5 members, and 3 shall constitute a quorum.

Please let me know if there are any follow up questions associated with establishing a quorum for the various boards and committees.



AT THE EDGE OF THE CITY AND  
THE HEART OF EVERYTHING

### **VILLAGE CLERK'S MEMO**

DATE: September 15, 2016

TO: Trustee Ann McKaig, Chair of the Judiciary, Personnel and Licensing Committee  
Judiciary, Personnel and Licensing Committee

FROM: Tanya O'Malley, Village Clerk/Treasurer

Re: Village Boards, Commissions, and Committees

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### **BACKGROUND**

The Judiciary, Personnel and Licensing (JPL) Committee is taking a closer look at volunteer committees, commissions and boards. Specifically, the JPL Committee is assessing the structure of the terms as well as attendance and membership requirements for each volunteer committee. The JPL Committee requested staff to compile a list of characteristics for each volunteer committee. This information has been compiled into a spreadsheet, which is attached to this memorandum. The JPL Committee will be using this spreadsheet for further analysis and discussion.

### Board of Appeals

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
VC: 535-52	5, 2 alternates	3 year terms		Chair - Village President w/o confirm by Village Board, others - JPL	Residents, Village Clerk is secretary	3 (535-54C)	2 allowed by code		2nd Tuesday each month, as needed.

### Board of Review

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
VC: 68-15	5, 4 alternates	5 year terms		Village President w/JPL, confirm by Village Board	Residents	3 (\$70.47)	4 allowed by Code		At least once during 30 days after 2nd Monday in May, then as needed.

### Community Development Authority

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
\$66.431, \$66.40	7 total, 2 from Village Board	4 year terms		two - Village President w/confirm by Village Board. Others, JPL	Residents	Majority, 4			1st Friday of each month, as needed.

### Conservation Committee

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
VC: 16-14	13 members	3 year terms		Village President w/JPL and Village Board, 1 student by SHS Principal	Residents, SHS Student	Majority, 7			1st Thursday of each month or by Chair, any three members or any Village official.

### Design Review Board

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
VC: 225-12	9, 3 alternates	3 year terms		Village President w/JPL, confirmation by Village Board	2 architects, 2 architects/design professionals, 1 real estate broker and four additional members	Majority, 4	3 allowed by code	Village Manager, Village Attorney and Planning/Zoning Administrator or their designees	2nd and 4th Thursdays each month, 1st and 3rd Thursdays in Nov/Dec.

### Elder Services Advisory Board

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
	7 members	3 year terms		Village President w/JPL, confirmation by Village Board		Majority, 4			1st Thursday of each month.

## Library Board

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
§43, VC: 350-1	7 members	3 year terms	3 terms, per Library Board of Trustees Bylaws	Village President w/JPL, confirmatoin by Village Board, 1 by School District.	Residents	Majority, 4			2nd Wednesday of the month and by call of director/president as necessary.

<http://shorewoodlibrary.org/content/content/GOV-2%20Library%20Board%20Bylaws.pdf>

## Parks Commission

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
§3.1501, §3.1504, VC: 16-8	7 members	3 year terms		Village President w/JPL, confirmation by Village Board	Residents	Majority, 4			2nd Tuesday each month.

## Pedestrian & Bicycle Safety Committee

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
VC: 16-18	7 members	3 year terms		Village President w/JPL, confirmation by Village Board	Residents/Business Owners	Majority, 4			2nd Tuesday each month.

## Plan Commission

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
VC: 16-1, §61.35, §62.23	9 total - Village President & 1 Trustee, 7 members	Village President & Trustee - 1 year term, members - 3 year terms		Village President with confirmation by Village Board	Residents	Majority, 5		Village Planner & Building Inspector	4th Tuesday each month, as needed.

## Police Commission

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
VC: 16-6, §3.503	5 members	5 year terms		Village President without confirmation by Village Board	Residents	Majority, 3			Meets on an as needed basis.

## Public Art Committee

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
VC: 16-22	7 members	3 year terms		Village President w/JPL, confirmation by Village Board	Appropriate skills, knowledge, experience	Majority, 4			Call of the chair when requested by Staff, member or Chair. As needed on Wednesdays and Fridays.

### Recreation & Community Services Advisory Committee

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
VC: 16-12, §3.1505	10 members	3 year terms		5 by Village President w/JPL & Village Board. 5 by School Board.		Majority, 6			Meetings are held on a quarterly basis.

### Village Board

Statute/Code	Members	Term Length	Term Limits	Appointing Agent	Requirements for Membership	Quorum	Alternates	Ex-Officio Voting Rights	Meetings
VC: 155, §1.101, §1.125	7 total - 6 Trustees, 1 President	3 year terms		Village President w/JPL, confirmation by Village Board		Majority, 4. Lesser may adjourn			1st and 3rd Mondays each month.