



To: Board of Parks and Recreation  
From: Mark Heintz, Director of Parks and Recreation  
Date: February 17, 2026  
Subject: Cobblestones Park improvement recommendation

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**Background:**

In May of 2025, a few concepts were shared with you for ways to improve the existing tennis court area at Cobblestones Park. At that time, it was discussed to change the existing two tennis courts into either three or six pickleball courts and that additional funding would be required. Additional funding was included in the 2025 park bond issue for this project.

After some input from the community, there was a desire to not completely eliminate tennis courts from Cobblestones Park. Since then, we have worked with a court designer/contractor on a layout that would rebuild the court area in the same footprint of the existing two tennis courts. The new proposed design is a 4+1 layout which would offer 4 pickleball courts and 1 tennis court, all in a north-south layout (see final page of attached for sketch). The courts would be built via the post-tension style to last much longer than the current asphalt type.

The new proposed design allows for a greater recreational opportunity by continuing to offer a tennis option while adding a pickleball option for the community as well. The Park Board approved of the new design at their January 20<sup>th</sup> meeting this year and also directed the staff to bring a formal proposal for construction to today's meeting.

**Methodology:**

Attached is a proposal to complete this project through the TIPS purchasing cooperative program at a cost of \$435,400. Funding from the last two bond issues will cover approx. \$400,000 for this project while the difference can be taken from the 2025 park bond after cost savings on equipment replacement purchases approved at last month's meeting. If this project is awarded before the end of February, a credit of \$20,000 would be applied, which would bring the cost of the project to \$415,400. This cost savings is being offered as the same company will be mobilized in Munster doing work on the School Town of Munster's new tennis courts at Community Park this spring.

As previously discussed, a parking improvement may have to be added at this park, if deemed warranted, to increase parking by either adding 8 spaces to the west end of the park by removing the multi-purpose court or by adding 7 spaces along Treadway by expanding the current lot to the east would be considered in the future once use patterns are realized. If that additional need is determined to be necessary, that phase will have to be completed after future funding is secured.

**Recommendation:**

Approve the purchase from Byrne & Jones Sports Construction through the TIPS purchasing cooperative and our member ID# IN992692 for the new post-tension courts for the design of four pickleball courts and one tennis court at Cobblestones Park to replace the two current tennis courts at a cost of not to exceed \$415,400.00 subject to a pending legal review and edits to the attached contract and to authorize the Director to execute such edited contract.

# AIA® Document A104™ – 2017

## Standard Abbreviated Form of Agreement Between Owner and Contractor

**AGREEMENT** made as of the 15th day of January in the year 2026  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:

(Name, legal status, address and other information)

Town of Munster Parks and Recreation Dept.  
1005 Ridge Road  
Munster IN 46321-1849

and the Contractor:

(Name, legal status, address and other information)

Byrne and Jones Construction – Sports  
13940 St. Charles Rock Road  
St. Louis, MO 63044

for the following Project:

(Name, location and detailed description)

Cobblestone Park - Tennis Court & Pickleball Courts  
801 Treadway Road, Munster IN 46321

The Architect:

(Name, legal status, address and other information)

N/A

The Owner and Contractor agree as follows.

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## EXHIBIT A DETERMINATION OF THE COST OF THE WORK

### ARTICLE 1 THE WORK OF THIS CONTRACT

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

### ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 2.1** The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

**«12/30/2025»** The date of this Agreement.

**«12/30/2025»** A date set forth in a notice to proceed issued by the Owner.

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

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

**§ 2.3 Substantial Completion**

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

*(Check the appropriate box and complete the necessary information.)*

[ «X» ] By the following date: « 9/1/2026 »

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

**ARTICLE 3 CONTRACT SUM**

**§ 3.1** 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.)*

[ X ] Stipulated Sum, in accordance with Section 3.2 below

*(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)*

**§ 3.2** The Stipulated Sum shall be **Four Hundred Fifteen Thousand Four Hundred Dollars** (\$415,400), subject to additions and deductions as provided in the Contract Documents. This contract sum is based on the base bid proposal provided by Byrne & Jones dated 12.30.25 (Exhibit A)

**§ 3.2.1** The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

Base Bid - 4 Pickleball And 1 Tennis Court Reconstruction Post Tension **\$359,400**  
Alternate 1 - Install 4' tall black vinyl chain link fence to divide the pickleball courts **\$3,500**  
Alternate 2 - Install exterior concrete curb around the perimeter of the court to encase the fence **\$27,700**  
Alternate 3 – Stabilization of the tennis/pickleball aggregate base **\$44,800**  
Schedule discount – If the project is approved by February 28<sup>th</sup>, 2026, and construction can start by April 1<sup>st</sup>, 2026  
**(\$20,000) credit**

**§ 3.2.2** Unit prices, if any:

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

10,

Item	Units and Limitations	Price per Unit (\$0.00)
N/A	N/A	N/A

**§ 3.2.3** Allowances, if any, included in the stipulated sum:

*(Identify each allowance.)*

Item	Price
N/A	N/A

**§3.2.4** To the extent that the Drawings and Specifications are anticipated to require further development, the Contractor has provided in the Contract Sum for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 3.3** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

« N/A »

## ARTICLE 4 PAYMENT

### § 4.1 Progress Payments

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

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

« 25<sup>th</sup> of Each Month »

**§ 4.1.3** Provided that an Application for Payment is received by the Owner not later than the **First Wednesday of the** month, the Owner shall make payment of the undisputed amounts included in the Application for Payment to the Contractor not later than the **Thirtieth** day of the **same** month. If an Application for Payment is received by the Contractor after the date fixed above, payment shall be made by the Owner not later than **Sixty** (60) days after the Owner receives the Application for Payment.

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

**§ 4.1.4** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

**§ 4.1.4.1** Owner may retain five percent (5%) of any payment due from Owner to Contractor until the Project is fifty percent (50%) complete as determined from the schedule of values in order to ensure the proper performance of the Contract. After the Project is fifty percent complete, Owner will retain amounts withheld from previous payments, but not retain additional amounts from progress payments so that, when the Project reaches Substantial Completion, Owner will have withheld retainage equal to 5% of the Contract Sum, as adjusted for Change Orders.

**§ 4.1.4.2** Notwithstanding Section 4.1.4.1, if, however, Contractor's performance is not in accordance with the terms of this Contract, Owner may retain additional sums to reasonably protect Owner's interest in ensuring that Contractor satisfactorily performs this Contract.

**§ 4.1.4.3** Within thirty days of substantial completion as defined herein, all retainage shall be released by the Owner to the Contractor less an amount equal to one hundred fifty percent of the costs to complete any remaining items.

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

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

**In accordance with the Indiana Local Government Prompt Payment Act**

**§ 4.1.6** In taking action on the Contractor's Application for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that

the Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with this Article 4 or other supporting data; that the Owner has made exhaustive or continuous on-site inspections or that the Owner has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract.

**§4.1.7 A** waiver of lien certification, in such appropriate form as attached hereto as Exhibit A – Waiver of Claims and Liens Forms, executed by the Contractor and each supplier and Subcontractor covering all labor and materials in full (such lien waiver may be conditional upon receipt of payment of the amount requested in the Application for Payment by the Contractor on behalf of the entity or persons), shall be submitted to the Owner together with each Application for Payment. In each Application for Payment, Contractor shall certify that there are no known mechanic's or materialmen's liens outstanding as of the date of the Application, due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application, and that except for such bills not paid but so included, there is no known basis for the filing of any mechanic's or materialmen's liens on the Work, and that waivers from all Subcontractors and materialmen have been obtained in such form as to constitute an effective waiver of lien under the laws of the State where the Project is located.

#### **§ 4.2 Final Payment**

**§ 4.2.1** 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 18.2, 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, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Owner in accordance with Section 15.7.1: and
- .4 all provisions of Sections 15.4.2, 15.5.1 and 15.5.2 are satisfactorily completed.

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

### **ARTICLE 5 DISPUTE RESOLUTION**

#### **§ 5.1 Binding Dispute Resolution**

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Litigation in a court of competent jurisdiction **in Lake County, Indiana**

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

### **ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 6.1** The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

**§ 6.1.1** The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

**§ 6.1.2** Additional documents, if any, forming part of the Contract Documents:

- .1 Other Exhibits:  
*(Check all boxes that apply.)*

**Exhibit A, Town of Munster Pickleball/Tennis Court Proposal from Byrne & Jones dated 12.30.2025**

## ARTICLE 7 GENERAL PROVISIONS

### § 7.1 The Contract Documents

§ 7.1.1 The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. 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 Contractor and approved by the owner. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Should any part, or parts of the Contract Documents disagree with themselves or with each other, the Contractor shall provide the better quality or greater quantity of Work unless otherwise directed by written modification to the Contract Documents.

§ 7.1.2 In the event of conflicts or discrepancies between the Contract Documents, the order of precedence for the interpretation of the various documents shall be as follows:

1. This Agreement between Owner and Contractor;
2. Any other Contract Documents listed in Section 6.1.2

In case of inconsistency between the Drawings and Specifications, the better quality or greater quantity of work shall be deemed required.

### § 7.2 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 between any persons or entities other than the Owner and the Contractor.

### § 7.3 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.

### § 7.4 Results of Service

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

### § 7.5 Ownership and use of Drawings, Specifications and Other Results of Service

§ 7.5.1 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Results of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and material and equipment suppliers are authorized to use and reproduce the Results of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, 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.

### § 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Results of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building

Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### **§ 7.7 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### **§ 7.8 Severability**

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

### **§ 7.9 Notice**

**§ 7.9.1** Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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

« N/A »

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

### **§ 7.10 Relationship of the Parties**

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Contractor and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

## **ARTICLE 8 OWNER**

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

**§ 8.1.1** Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

**§ 8.1.2** The Owner shall furnish all necessary surveys and a legal description of the site as reasonably necessary for the Project and upon Contractor's written request for such information.

**§ 8.1.3** The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but only after the Contractor diligently reviews such information and advises the Owner of any discrepancies or problems in such

information that the Contractor observes. The Contractor shall exercise proper precautions relating to the safe performance of the Work in its reliance on Owner-supplied information.

**§ 8.1.4** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities. The Contractor shall assist Owner in securing any permits or other governmental approvals that are not the responsibility of Contractor to obtain.

### **§ 8.2 Owner's Right to Stop the Work**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the 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 is 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.

### **§ 8.3 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 or fails to perform a provision of the Contract, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Owner and the Owner may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21. If such costs exceed the unpaid Contract balance, the Contractor shall pay the difference to the Owner.

### **§ 8.4 OWNER'S RIGHT TO AUDIT**

For all Work performed by the Contractor on a cost-plus or time and material basis, the Contractor shall keep full and accurate records of all costs incurred and items billed in connection with the performance of the Work, which records shall be open to audit by the Owner or its authorized representatives during performance of the Work and until three years after Final Payment. In addition, the Contractor shall make it a condition of all subcontracts relating to the Work that any and all Subcontractors will keep accurate records of costs incurred and items billed in connection with their work and that such records shall be open to audit by the Owner or its authorized representative during performance of the Work and until two years after its completion.

## **ARTICLE 9 CONTRACTOR**

### **§ 9.1 Review of Contract Documents and Field Conditions by Contractor**

**§ 9.1.1** Execution of the Contract by the Contractor is a representation that said Contract Documents are complete, are sufficient to have enabled the Contractor to determine the cost of the Work shown therein, and that the Contract Documents are sufficient to enable Contractor to construct the Work shown therein and otherwise to fulfill the Contractor's obligations to construct the Work for an amount not in excess of the Contract Sum on or before the date of Substantial Completion established in the Agreement. The Contractor further acknowledges and declares that it has visited and examined the site, examined all conditions affecting the Work of every kind and nature and is fully familiar with all of such conditions. In connection therewith, the Contractor specifically represents and warrants to the Owner that it has, by careful examination, satisfied himself as to: (a) the nature, location and character of the site, including, without limitation, all structures and obstructions pertaining thereto, both natural and manmade; (b) the nature and character of the area in which the Project is located, including without limitation, its climatic conditions, parking availability, staging areas, available labor supply and labor costs and available equipment supply and equipment costs; and (c) the quality and quantity of all materials, supplies, tools, equipment, labor and services of any kind necessary to complete the Work within the cost and timeframe required by the Contract Documents and otherwise in accordance with the Contract Documents. In connection with the foregoing, after having carefully examined all Contract Documents and having visited the site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities or conflicts in and among said Contract Documents and

that if it becomes aware of any such discrepancies, omissions, ambiguities or conflicts, it will promptly notify Owner of such fact.

**§ 9.1.2** 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 8.1.2, 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. The Contractor and its Subcontractors shall make reasonable efforts to satisfy themselves as to the accuracy of all grades, elevations, dimensions and locations given on any Drawings issued by the Contractor. Prior to performing the Work, Contractor shall verify at the site all dimensions relating to existing conditions and the work installed by other contractors. Any errors or rework due to Contractor's failure to verify all such grades, elevations, dimensions and locations shall be promptly corrected without additional cost to the Owner. The Contractor shall promptly report to the Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the owner may require.

**§ 9.1.3** Except as otherwise provided herein, 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 Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner may require.

**§ 9.1.4** Contractor's responsibility for an error, inconsistency, omission in the Contract Documents, if any, is limited to any error, inconsistency or omission therein that Contractor, exercising a reasonable review and examination, actually detected, or should have detected, and yet did not promptly report same to the Owner.

## **§ 9.2 Supervision and Construction Procedures**

**§ 9.2.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

**§ 9.2.1.1** Contractor shall be solely responsible for all means, methods, techniques and safety measures affecting the proper and safe performance of the Work. Contractor shall maintain and enforce an adequate safety policy, and Contractor shall comply with all laws, regulations, codes and rules affecting the performance of the Work in a safe manner, including OSHA. Contractor shall promptly respond to and adequately remedy any and all complaints by governmental authorities or by adjoining or nearby landowners or occupants relating to the claimed release of, or failure to clean up, debris, mud, dirt, or other construction waste or by-products.

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

## **§ 9.3 Labor and Materials**

**§ 9.3.1** 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.

**§ 9.3.2** 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 skilled in tasks assigned to them.

**§ 9.3.3** The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Owner and in accordance with a Modification. Any proposed substitution must be submitted at such a time that it does not affect the construction schedule. Substitutions that do not meet the intent of the specifications will be rejected.

**§ 9.3.4** The Contractor shall use its best efforts to employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use all reasonable efforts to minimize the likelihood of any strike, work stoppage or other labor

disturbance. If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Owner, any jurisdictional work conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish the work of any particular trade.

#### **§ 9.4 Warranty**

**§ 9.4.1** The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

**§ 9.4.2** The Contractor agrees to assign to the Owner at the time of final completion of the Work, all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work so as to preserve all such warranties.

#### **§ 9.5 Taxes**

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Contractor shall execute Work with provisions as required for Owner's tax exempt status.

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

**§ 9.6.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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.

**§ 9.6.2** 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. 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.

#### **§ 9.7 Allowances**

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

#### **§ 9.8 Contractor's Construction Schedules**

**§ 9.8.1** The Contractor, within twenty (20) days of the date of this Agreement or at the time of Contractor's submission of its first application for payment, whichever is earlier, shall submit for the Owner's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The contractor is responsible to meet the schedule regardless of items that have longer lead times as these should be worked into the schedule. Any items that require long lead times affecting the schedule must be identified with the bid via bid proposal qualifications.

## **§ 9.9 Submittals**

**§ 9.9.1** The Contractor shall review for compliance with the Contract Documents and submit to the Owner Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Owner reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner 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. The Work shall be in accordance with approved submittals.

**§ 9.9.2** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

**§ 9.9.3** 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 or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Owner will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Owner's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Owner will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

## **§ 9.10 Use of Site**

**§ 9.10.1** The Contractor shall confine operations at the site to areas permitted by Owner, applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Contractor shall use its best efforts to avoid undue disruption of Owner's operations and facilities.

**§ 9.10.2** Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner.

## **§ 9.11 Cutting and Patching**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

## **§ 9.12 Cleaning Up**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project. Unless given written permission, neither Contractor nor any of its subcontractors shall be permitted to dispose of waste materials or rubbish in the Owner's dumpsters.

## **§ 9.13 Access to Work**

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

## **ARTICLE 11 SUBCONTRACTORS**

**§ 11.1** 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.

**§ 11.2** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the prospective Subcontractors or suppliers proposed for each of the principal

portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner has expressly disqualified prior to Contractor's submission of its bid to Owner or has made reasonable written objection following Contractor's disclosure of the prospective Subcontractors' names to Owner within ten days after receipt of the Contractor's list of Subcontractors and suppliers. No reimbursement shall be made by the Owner to the Contractor for costs occasioned by compliance with this Section, unless the proposed but rejected Subcontractor was not expressly disqualified by Owner prior to Contractor's submission of its bid and was reasonably capable of performing the Work, then, in such an event 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 11.3** Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

## **ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

## **ARTICLE 13 CHANGES IN THE WORK**

**§ 13.1** By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor or by written Construction Change Directive signed by the Owner. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

**§ 13.2** The credit to the Owner from a deductive change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive, by the reasonable value of labor, material, equipment, and overhead and profit for the omitted work.

**§ 13.3** Adjustments in the Contract Sum and Contract Time resulting from a change in the Work that increases Contractor's scope of work shall be determined by mutual agreement of the parties in the form of a change order or, in the case of a Construction Change Directive, as follows:

1. Where Contractor self-performs the change in the Work, Contractor shall be entitled to (1) an equitable adjustment in the Contract Time and (2) Contractor's actual cost of labor, material and equipment; and 10% of such costs for Contractor's general conditions, supervision, overhead, extended overhead and profit.
2. Where Contractor is unable to self-perform the change in the Work and enters into a contract with a Subcontractor or directs a Subcontractor to perform the change in Work, Contractor shall be entitled to (1) an equitable adjustment in the Contract Time and (2) Subcontractor's actual cost of labor, material and equipment; and 5% of such costs for Contractor's general conditions, supervision, overhead, extended overhead and profit and up to 10% of such costs for payment to Subcontractor for Subcontractor's general conditions, supervision, overhead, extended overhead and profit. Payment to Contractor, in any event, shall not exceed 15% of Subcontractor's costs of labor, material and equipment.

**§ 13.4** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and

Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner promptly and before conditions are disturbed.

**§ 13.5** The failure of Contractor and Owner to agree on an adjustment of the Contract Sum or Contract Time shall not excuse Contractor from proceeding with the prosecution and performance of the Work, as changed, provided that a written Construction Change Directive or order for a minor change in the Work has been issued and executed.

#### **ARTICLE 14 TIME, DELAYS AND EXTENSIONS OF TIME**

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

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

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

**§ 14.4** The date of Substantial Completion is the date certified and approved by the Owner in accordance with Section 15.6.3.

**§ 14.5** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner may determine, subject to the provisions of Article 21.

**§ 14.6** Except as herein provided, Contractor shall not be entitled to any increase in the Contract Sum nor any monetary payment, reimbursement, or compensation over and above the Contract Sum for any delay in the commencement, prosecution, hindrance or obstruction in the performance of the Work; loss of productivity or other similar claims, or any loss, cost, damage or expense of any kind, including, but not limited to, consequential damages, lost opportunity costs, impact damages or other similar remuneration, to the extent any delay in the work is caused by the Contractor or to the extent any delay is beyond the reasonable control of both parties. Contractor expressly waives any right to claim such loss, cost, damage or expense on account thereof.

**§ 14.7** Except when Contractor's progress is materially delayed or disrupted by acts, constituting active interference by the Owner, Contractor's sole remedy, should its progress be delayed or disrupted by acts or omissions of the Owner or any other person or entity other than the Contractor, a Subcontractor at any tier, a supplier at any tier or any of their respective agents or employees, and provided the delay or disruption is beyond the reasonable control of the Contractor, is an appropriate extension of the Contract Time. To preserve its right to make a claim under this Section, Contractor shall, within seven (7) days of the commencement of the event causing the delay or disruption, deliver a written notice to the Owner which: (i) describes the events causing the delay or disruption; (ii) identifies the actual or probable consequences to the schedule for completing the Work; and (iii) identifies the actual or probable costs occasioned by Owner's active interference, if any. A time extension may only be granted for delays which are proven to adversely affect the critical path of the current schedule.

#### **ARTICLE 15 PAYMENTS AND COMPLETION**

##### **§ 15.1 Schedule of Values**

**§ 15.1.1** Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Owner before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Owner. This schedule of values unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

## § 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

## § 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner may require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 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 stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 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 other encumbrances adverse to the Owner's interests.

## § 15.4 Certificates for Payment

§ 15.4.1 The Owner will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Contractor a Certificate for Payment for such amount as the Owner determines is properly due, or notify the Contractor of the Owner's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

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

§ 15.4.3 The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner agrees to. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify

the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 repeated failure to carry out the Work in accordance with the Contract Documents.
- .7 failure to submit a complete Application in compliance with the requirements of the Contract Documents and at the prescribed time.

**§ 15.4.4** When either party disputes the Owner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

### **§ 15.5 Progress Payments**

**§ 15.5.1** 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. Notwithstanding anything in this Section 15.3.1 to the contrary, the Owner may elect, in the Owner's sole discretion, to make any payment requested by the Contractor on behalf of a Subcontractor of any tier jointly payable to the Contractor and such Subcontractor. The Contractor and such Subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (1) contract between the Owner and a Subcontractor of any tier; (2) obligations from the Owner to such Subcontractor, or (3) rights in such Subcontractor against the Owner.

**§ 15.5.2** The Owner shall not have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

**§ 15.5.3** 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.

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

### Section 15.5.5

#### **§ 15.5.5 Prompt Payment of Subcontractors**

- .1 Prior to release of any payment Contractor shall provide Owner their subcontractors social security or EIN as follows: (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers. Payments otherwise due may be withheld by Owner or Contractor for any subcontractor who does not furnish this information, and payments properly withheld under this clause will not be subject to interest or penalties.
- .2 Contractor shall be liable for the entire amount owed to any subcontractor with which it contracts for work properly completed in accordance with the contract documents. Contractor shall not be liable for amounts otherwise reducible due to subcontractor's noncompliance with the terms of the contract documents. Payment by Owner to the Contractor shall not be a condition precedent to payment to any lower-tier subcontractor for work properly performed and for which payment is due, regardless of the Contractor receiving payments for amounts owed to that contractor.
- .3 Contractor shall make payment to the subcontractor within 7 days of the contract progress payment due date as agreed upon by the Owner and Contractor as defined in the Contract Documents for all Contract work properly completed in accordance with the Contract Documents. Contractor shall notify Subcontractor of non-conforming work

for which payment will not be made per 15.4.4.4 below.

.4 Within seven days after the Contractor receives amounts paid for work subject to the Agreement performed by any Subcontractor, the Contractor shall take one of the two following actions: a) Pay the Subcontractor for the proportionate share of the total payment received from the Owner attributable to the work performed by the Subcontractor; or b) Notify the Owner and the Subcontractor in writing of the Contractor's intent to withhold all or part of the Subcontractor's payment and the reason for nonpayment.

.5 The Contractor shall pay interest to any Subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the Owner for work performed by such Subcontractor relating to the Agreement except as to amounts withheld as allowed in Section 15.3.3. Unless otherwise provided under the terms of the Agreement, and solely for the purpose of these prompt payment requirements, interest shall accrue at the rate of one percent (1%) per month.

.6 The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor (Sub-subcontractor).

.7 No obligation imposed by this Section 15.5.5 shall be construed to create any obligation of the Owner.

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

## § 15.6 Substantial Completion

**§ 15.6.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, provided, however that as a condition precedent to Substantial Completion, the Owner has received all Certificates of Occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Work or portions thereof.

**§ 15.6.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner 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.

**§ 15.6.3** Upon receipt of the Contractor's list, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Owner determines that the Work or designated portion thereof is substantially complete, the Owner will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities as approved by Owner, of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

## § 15.7 Final Completion and Final Payment

**§ 15.7.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly notify the Contractor and issue a final Certificate for Payment stating that to the best of the Owner's knowledge, information and belief, and on the basis of the Owner's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Owner's final Certificate for Payment will constitute a further

representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 15.7.2** It is the Contractor's responsibility to submit Certified Payroll documentation to the Owner for the labor used on the project associated with completing the Contractor's scope of work.

**§ 15.7.3** Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or 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 costs and reasonable attorneys' fees.

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

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 15.7.5** Acceptance of final payment by the Contractor, a Subcontractor or 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 the final Application for Payment.

## ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

### § 16.1 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 take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

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

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 and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

### § 16.2 Hazardous Materials and Substances

**§ 16.2.1** The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner of the condition. 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 shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels are less than any applicable exposure standards as set forth in regulations of any governmental agency having jurisdiction.

## ARTICLE 17 INSURANCE AND BONDS

### § 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

§ 17.1.1 The Contractor shall provide insurance coverage for limits of liability as set forth below, or as required by law, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations.

Each insurance policy to be maintained by Contractor shall be underwritten by a reputable insurance company authorized to do insurance business in Missouri and acceptable to Owner. All such insurance, where applicable, shall include the Owner and if necessary the Owner's lender or banking institution, and title insurer as additional insureds. Each policy shall contain cross-liability wording. All such insurance shall be primary with respect to claims made by the additional insured, and any similar or additional insurance maintained by Owner shall be secondary and excess to that carried by Contractor, its consultants or subcontractors.

#### § 17.1.2 Commercial General Liability (CGL):

Commercial General Liability on an occurrence basis, including contractual liability coverage for Contractor's indemnity obligations in the Agreement, with limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Claims-made coverage forms are not acceptable.

- a. CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, elevator liability, bodily injury, personal injury, advertising injury, broad form comprehensive liability endorsement, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Property damage liability insurance will provide explosion, collapse and underground coverage. Completed operations coverage shall continue for a minimum of three years after the date of Substantial Completion of the Project under this Agreement.
- b. Owner, and if necessary the Owner's lender or banking institution, and title insurer shall be included as an additional insured under the CGL. This insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by, the additional insureds.
- c. There shall be no endorsement or modification of the CGL, limiting the scope of coverage for liability arising from explosion, collapse, underground property damage or employment-related practices.

#### § 17.1.3 Comprehensive Automobile Liability:

Contractor shall maintain business auto liability with a limit of not less than \$1,000,000 each accident and \$1,000,000 each person.

- a. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos and uninsured motorists).
- b. Business auto coverage shall be written on ISO form CA 0001, CA 0005, CA 0002, CA 0020 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 0001.

#### § 17.1.4 Workers' Compensation:

Contractor shall maintain Workers' Compensation coverage equal to "statutory" limits. Evidence of corresponding Employers' Liability coverage to a limit of \$1,000,000 each accident for bodily injury due to accident or each employee for bodily injury due to occupational disease.

**§ 17.1.5 Umbrella Excess Liability:**

\$4,000,000 each occurrence and \$4,000,000 aggregate

**§ 17.1.6 No Limitation on Liability**

By requiring the insurance as set out herein, Owner does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities provided to Owner in this Agreement.

**§ 17.1.7 Certificates of Insurance**

Prior to commencing the Work, Contractor shall furnish Owner with (i) a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above, and (ii) duly executed endorsements showing that Owner has been added as an additional insured on the Commercial General Liability and Automobile Liability policies.

- a. All certificates shall provide for thirty (30) days' written notice to Owner prior to the cancellation of any insurance referred to herein or change of coverage on the CG20 10 85 form or similar to (CG 20-26 or CG 20-37).
- b. Failure of Owner to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- c. Owner shall have the right, but not the obligation, to prohibit Contractor or any Subconsultant or Subcontractor from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.
- d. With respect to insurance to be maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to Owner when requested.

**§ 17.1.8 Failure to Maintain Insurance**

Failure to maintain the insurance required in this Agreement may result in termination of this Agreement at Owner's option. If Contractor fails to maintain the insurance as set forth herein, Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

**§ 17.1.9 Copies of Insurance Policies**

If Contractor, under the terms of this Agreement, is obligated to defend Owner or other Indemnitee on a pending claim and Contractor fails or refuses to do so, Contractor shall provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.

**§ 17.1.10** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

**§ 17.1.11** The Contractor shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Contractor.

**§ 17.1.12** To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the

Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and CG 20 32 07 04.

**§ 17.1.13** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## **§ 17.2 Owner's Insurance**

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

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

### **§ 17.2.2 Property Insurance**

**§ 17.2.2.1** The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ 17.2.2.2** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

**§ 17.2.2.3** If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ 17.2.2.4** If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ 17.2.2.5** Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ 17.2.2.6** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The

furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

#### **§ 17.2.2.7 Waiver of Subrogation**

**§ 17.2.2.7.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 17.2.2.7.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

**§ 17.2.2.8** 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. The Owner shall pay the Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Contractor shall make payments to their consultants and Subcontractors in similar manner.

#### **§ 17.3 Performance Bond and Payment Bond**

**§ 17.3.1** The Contractor, at the time designated herein, shall in accordance with the requirements of Indiana Compiled Statutes furnish to the Owner a Performance Bond and a Payment Bond each in the amount equal to one hundred percent (100%) of the Contract Sum, executed by one or more surety companies selected by the Contractor which are legally authorized to do business in the State of Indiana, inclusive of the following:

- .1 A Performance Bond in the amount of the Contract Sum conditioned upon the faithful performance of the Contract in strict conformity with the Contract Documents.
- .2 A Payment Bond in the amount of the Contract Sum. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the Contractor, or to any Subcontractors, in the prosecution of the Work. "Labor or materials" shall include, but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the Site.
- .3 The selected surety(ies) shall be rated A Minus (A-) or better by Best's Insurance reports, and shall be listed in the most recent U.S. Department of the Treasury's listing of approved sureties (Department Circular 5701).

**§ 17.3.2** The Contractor shall, subsequent to the resolution of all outstanding Change Orders and prior to Final Payment, submit to the Owner such evidence as necessary to establish any additional bond premium(s) incurred by the Contractor due to all adjustments in the Contract Sum. A Change Order shall be executed to include the cost only of all such additional bond premiums in the final Contract Sum. The Owner will compensate the Contractor only for the cost of the additional premium(s); application of mark-ups, overhead, profit, or other such items to the premium cost is not permitted.

**§ 17.5.3** The bonds required by this Section 17.5 shall be maintained by the Contractor until final payment is made under the contract. If at any time the surety for such bonds becomes insolvent or loses its right to transact business in the jurisdiction of the Project, the Contractor shall, within seven (7) days of notice from Owner to do so, substitute an acceptable Performance Bond and Payment Bond signed by such other corporate surety as may be acceptable to Owner. The premium on such bonds shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety shall have furnished acceptable bonds to Owner.

## **ARTICLE 18 CORRECTION OF WORK**

**§ 18.1** The Contractor shall promptly correct Work rejected by the Owner 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, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

**§ 18.2** In addition to the Contractor's obligations under Section 9.4, 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 15.6.3, 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 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.

**§ 18.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

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

**§ 18.5** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

## **ARTICLE 19 MISCELLANEOUS PROVISIONS**

### **§ 19.1 Assignment of Contract**

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to an entity affiliated with the Owner. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **§ 19.2 Governing Law**

The Contract shall be governed by the law of the State of **Indiana** without regard to its choice of law rules. This Agreement shall be construed as to its fair meaning and not strictly for or against either party. If any term, condition or provision of this Agreement is found unenforceable by a court of law or equity, this Agreement shall be construed as though that term, condition or provision did not exist, and its unenforceability shall have no effect whatsoever on the remainder of this Agreement. Title and headings of sections of this Agreement are for convenience of reference only, and shall not affect the construction of any provisions of this Agreement.

### **§ 19.3 Tests and Inspections**

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. 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 Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

### **§ 19.4 NOTICES**

All notices to be given hereunder by either party to the other party shall be in writing and served by U.S. Mail, return-receipt requested, by a national overnight delivery service, or by facsimile with receipt acknowledged to the Designated Representative of the party at the address set forth for such Designated Representative. Either party may change its Designated Representative by giving notice of such change to the other party. Notices given by mail or

overnight delivery shall be deemed given upon receipt; notices given by facsimile shall be deemed given the day received, provided that if the notice was faxed after 5:00 p.m., it shall be deemed given the next business day.

## § 19.5 REPRESENTATIVES

### § 19.5.1 The Owner's representative:

(Name, address, email address and other information)

Mark Heintz, 1005 Ridge Road, Munster IN 46321-1849 [mheintz@munster.org](mailto:mheintz@munster.org), Director of Parks and Recreation

### § 19.5.3 The Contractor's representative:

(Name, address, email address and other information)

Dalton Pafford, 13940 St. Charles Rock Rd, Bridgeton, MO 63044, [dpafford@byrneandjones.com](mailto:dpafford@byrneandjones.com), Project Manager

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

§ 19.7 **Prevailing Wage** Contractor shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work under this contract, and shall comply with the requirements of the **Indiana Wages of Employees on Public Works Act**.

## ARTICLE 20 TERMINATION OF THE CONTRACT

### § 20.1 Termination by the Contractor

If the Owner fails to make payment for a period of 30 days beyond the time in which payment is due, the Contractor may give written notice of such non-payment to the Owner. If the Owner does not make payment to the Contractor for the executed Work less deductions as provided for herein within seven days of the written notice, the Contractor may terminate the Contract and recover from the Owner payment for the cost of the Work executed plus an additional 5% of the cost of the executed Work for overhead and profit and for proven loss with respect to the materials, equipment, tools, and construction equipment and machinery.

### § 20.2 Termination by the Owner for Cause

#### § 20.2.1 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.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Owner that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including 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. This obligation for payment shall survive termination of the Contract.

### **§ 20.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**§ 20.3.1** 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.

**§ 20.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 20.3.1. No adjustment shall be made to the extent:

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

### **§ 20.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

**§ 20.4.2** 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.

**§ 20.4.3** Upon termination for convenience, the Contractor shall recover as its sole remedy payment for (1) Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination, (2) items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions, (3) reasonable costs incurred in connection with terminating subcontracts, (4) reasonable costs incurred for the protection and preservation of the Work, and (5) reasonable overhead and profit on items listed herein. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits.

In calculating the amount due Contractor under this Section 20.4, the Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, and (2) claims which the Owner has against the Contractor under the Contract.

**§ 20.4.4** Any default termination of Contractor by Owner subsequently determined to have been wrongful or erroneous, shall be treated as a termination for convenience.

## **ARTICLE 21 CLAIMS AND DISPUTES**

**§ 21.1** Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Contractor but excluding those arising under Section 16.2, shall be referred initially to the Owner for review. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Owner or 30 days after submission of the matter to the Owner, be subject to mediation as a condition precedent to binding dispute resolution.

### **§ 21.2 Notice of Claims**

**§ 21.2.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Owner and Contractor 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.

**§ 21.2.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

**§ 21.3 Time Limits on Claims**

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

**§ 21.4** If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by the Owner or by mediation.

**§ 21.5** The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. In no event shall the demand for mediation be made after the date when the institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitation. Such mediation is non-binding and any settlement arising from the mediation must be agreed to by the parties in writing.

**§ 21.6** If the parties have selected arbitration as the method for binding dispute resolution in this 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 the Construction Industry Arbitration Rules in effect on the date of this Agreement. 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 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.

**§ 21.7** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, 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).

**§ 21.8** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration 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 a Claim not described in the written Consent.

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

**§ 21.10 Continuing Contract Performance**

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

### § 21.11 Waiver of Claims for Consequential Damages

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract, except Owner does not waive consequential damages to the extent of any applicable insurance policy held by the Contractor. 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, except as limited herein, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

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

**OWNER** *(Signature)*

*(Printed name and title)*

**CONTRACTOR** *(Signature)*

**Jameson Sheley, General Manager**

*(Printed name and title)*

### EXHIBIT A



**Byrne & Jones**  
SPORTS CONSTRUCTION

13940 St. Charles Rock Road  
ST. LOUIS, MO 63044  
PHONE: (314) 567-7997  
FAX: (314) 567-1828

[WWW.BYRNEANDJONES.COM/sports](http://WWW.BYRNEANDJONES.COM/sports)

DATE: 1.15.2026

Munster Parks & Recreation  
1005 Ridge Rd  
Munster, IN 46321

Attn: Mark Heintz, Director of Parks and Recreation

Re: Munster Tennis/Pickleball Courts

Dear Mr. Heintz,

On behalf of Byrne & Jones Construction's Sports Division, I would first like to thank you for the opportunity to submit our proposal for the Athletic Facility Improvements. Our team has reviewed the project thoroughly and we have assembled an attractive and competitive package for the district.

Since 1976, our people at Byrne & Jones have been guided by the foundation of our core values. Our team of talented builders pledge to always **DO THE RIGHT THING** and we will **DO WHAT IT TAKES** regardless of the challenge in front of us. We accomplish this through the **MUTUAL TRUST & RESPECT** that we have for our people and our customers. Last but not least, our resume and qualifications speak for themselves. **WE ARE THE EXPERTS** in Sports Construction.

In the following pages you find our proposal for your review. Some key aspects of our proposal includes:

- Qualifications
- General Conditions
- Scope of Work
- Pricing
- Alternates
- Warranties

If you have any questions or need anything at all, please feel free to use us as a resource.  
Sincerely,

Victor Mullen  
Business Development Manager  
Byrne & Jones Construction | Sports Division  
C: (314) 708-8486  
E: [vmullen@byrneandjones.com](mailto:vmullen@byrneandjones.com)



**CFB-S**  
CERTIFIED FIELD BUILDER - Synthetic Turf  
ON STAFF

**ASBA CTB**  
CERTIFIED TRACK BUILDER  
ON STAFF

FIELDS | TRACKS | COURTS | PARKS & REC



**Byrne & Jones**  
SPORTS CONSTRUCTION

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ST. LOUIS, MO 63044  
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FAX: (314) 567-1828

[WWW.BYRNEANDJONES.COM/sports](http://WWW.BYRNEANDJONES.COM/sports)

<b>PROJECT</b>	Town of Munster Pickleball/Tennis Court	<b>DATE</b>	1.15.26
<b>TO</b>	Mark Heintz, Director of Parks & Recreation	<b>PLANS</b>	Per B&J Dated 1.15.26
<b>FROM</b>	Vic Mullen, Business Development Manager	<b>SPECS</b>	ASBA Standards

#### **QUALIFICATIONS**

- Starting in 1976, B&J has completed over **700 running tracks, 600 athletic fields, and 350 courts**.
- Byrne & Jones is a member of the American Sports Builders Association (**ASBA**) since 2009
- Byrne & Jones has **EIGHT ASBA Certified Synthetic Turf Field Builders on Staff (CFB-S)**
- Byrne & Jones has **ONE ASBA Certified Field Builders on Staff (CFB)**
- Byrne & Jones has **THREE ASBA Certified Track Builders on Staff (CTB)**
- Byrne & Jones has been honored with **TWENTY-TWO ASBA Excellence Awards**

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#### **GENERAL CONDITIONS**

- Provide project renderings, shop drawings, and detailed drawings for owners approval prior to construction
- Pre-construction meeting to be held prior to mobilization to the site
- Secure applicable permits required include City, County, and State
- Owner shall provide reasonable access to the jobsite for construction, material deliveries, and material laydown
- Mobilization of necessary material, equipment and labor to the job site
- Provide dedicated on-site project superintendent and office/field project manager
- Provide on-site supervision of all staging area, material and equipment delivery
- In-House Professional Surveying provided for layout of our work
- Provide portable restrooms, dumpsters, and construction fencing as needed
- Provide as-built drawings upon completion
- Conduct final walkthrough with owner for project acceptance
- Provide maintenance manual and training of owner personnel
- B&J's proposal includes all necessary items to complete the detailed scope of work. No additional costs will be incurred unless the owner elects to add scope to the project or through unforeseen circumstances.
- Our proposal only includes known/foreseeable circumstances or conditions. Unforeseen circumstances or items not listed in this proposal are not included. Any work provided outside of the scope of work listed in this proposal can be provided for an additional cost by a mutually agreed to change order.

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FIELDS | TRACKS | COURTS | PARKS & REC



**Byrne & Jones**  
SPORTS CONSTRUCTION

13940 St. Charles Rock Road  
ST. LOUIS, MO 63044  
PHONE: (314) 567-7997  
FAX: (314) 567-1828

[WWW.BYRNEANDJONES.COM/sports](http://WWW.BYRNEANDJONES.COM/sports)

**4 PICKLEBALL AND 1 TENNIS COURT RECONSTRUCTION – POST TENSION (Cobblestone Park - Treadway Rd)**

- Remove the existing fences on the existing pickleball and tennis courts
- Remove the existing asphalt from the pickleball and tennis courts to the aggregate base
- Install 4 pickleball nets and 1 tennis net complete with sleeved foundations
- Install 2 layers of vapor barrier over the aggregate base
- Install cable tendons running both directions in the concrete slab
- Install 5" of 4000psi concrete for the court area with a 1ft by 1ft thickened edge
- Tension the cables once the concrete reach the proper strength
- Install pickleball and tennis surface coloring and striping for the courts
- Install 10' tall black vinyl chain link fence around the perimeter of the tennis court (see rendering)
- Install 4' tall black vinyl chain link fence around the perimeter of the pickleball courts (see rendering)
- Install cutouts in the interior fence to allow easier movement throughout the courts
- Install two 3' wide swing gates to allow access to the courts
  - The two gates can be installed in either the 4' or 10' tall fence
- Seed and straw all areas disturbed by Byrne & Jones during construction

**TOTAL INVESTMENT: \$359,400**

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**ALTERNATES FOR THE NEW PICKLEBALL COURTS**

- Install 4' tall black vinyl chain link fence to divide the 2 banks of pickleball courts      ADD: \$3,500
- Install exterior concrete curb around the perimeter of the  
pickleball courts to mount the exterior fence      ADD: \$27,700

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**SOIL STABILIZATION**

- Unless otherwise noted, soil stabilization of the subgrade is not included in this proposal. A determination on whether or not soil stabilization is required will be determined by a proof roll of the subgrade to be observed by B&J and the owner. Should the owner elect not to do any soil stabilization recommended by B&J, B&J cannot guarantee the base of the field will not move causing planarity issues. B&J recommends that the owner always have a contingency for soil stabilization as most projects in the Midwest will require it in some form.
- **Recommended contingency for the stabilization of the aggregate base pickleball/tennis court area      \$44,800**

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**WARRANTIES**

- 5 year Post Tension slab warranty
- 1 year pickleball/tennis court coloring and striping warranty
- 1 year civil construction/general contractors warranty



**CFB-S**  
CERTIFIED FIELD BUILDER - Synthetic Turf  
ON STAFF

**CTB**  
CERTIFIED TRACK BUILDER  
ON STAFF

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**NOTES/EXCLUSIONS**

1. Price does not include any storm water detention or water quality.
2. Price does not include any work not specified in the above proposal.
3. Includes mobilization in (1) phase.
4. Price based on normal working hours and days.
5. Price based on mutually agreeable contract language.
6. Price based on tax exempt pricing.
7. Price based on complete access to the jobsite.
8. Price does not include any rock breaking, blasting, excavation, or removals.
9. Price does not include the testing for, removal or disposal of contaminated or unsuitable soils or materials.
10. Any modification to rock, asphalt, and material type must be mutually agreed upon.
11. Price does not include any pavement repairs due to construction traffic.
12. Unless otherwise noted, Soil Stabilization is not included in this proposal.
13. B&J has five TIPS Cooperative Purchasing Contracts including Sports Fields, Courts, or Tracks; Paving; and General Trades, Labor and Materials. Contract #'s: 23010401, 23010402, 23020101, 23020102, and 200602.
14. This proposal falls under contract #: 23020101
15. Priced based on owner signing the TIPS reduction form.
16. Net 30 payment terms.
17. Pricing is good for 30 days.

If you have any questions, please feel free to contact me.

Sincerely,

Victor Mullen  
Business Development Manager  
Byrne & Jones Construction | Sports Division

**ACCEPTED BY :**

Print Name, Title

Signature

Date



**CFB-S**  
CERTIFIED FIELD BUILDER - Synthetic Turf  
ON STAFF

**ASBA CTB**  
CERTIFIED TRACK BUILDER  
ON STAFF

FIELDS | TRACKS | COURTS | PARKS & REC

