

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, winter conditions, weather protection 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.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new, that the Work will be free from defects, and that the Work will strictly conform to the requirements of the Design-Build Documents and applicable laws, codes and standards and that the Work will be fit for its intended purpose. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective, in Owner's sole discretion. The Design-Builder's warranty only excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. In addition to the above warranty, Design-Builder hereby assigns any and all manufacturer or supplier warranties relating to materials or labor incorporated into the Work or the Project. Design-Builder shall perform all Work in such manner so as to preserve and not prejudice Owner's rights under such warranties.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations, including but not limited to the Americans With Disabilities Act and related regulations governing accessibility.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.8 ALLOWANCES

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

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

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

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work but it shall be Design-Builder's responsibility to notify Owner of reasonable deadlines for such selections, well in advance of such deadlines.

§ A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work. The schedule shall include computerized, critical path schedules in such detail and form as Owner may require, including without limitation, electronic backup demonstrating logic ties and underlying data changes. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build 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 Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the

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Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.12.2 Only materials and equipment that are to be used in the Work shall be brought to and stored on the Project site by Design-Builder. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, vandalism or other perils is solely the responsibility of the Design-Builder. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment to ensure that such areas are free from hazards or dangers.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights, trade secrets, Lanham Act or similar claims of ownership, and shall hold the Owner harmless from loss, damages or costs (including but not limited to attorney's fees, expert witness fees or expenses of litigation) on account thereof, but shall not be responsible for such defense or loss which a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications, or other documents prepared by or furnished to the Design Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ A.3.17 INDEMNIFICATION

§ A.3.17.1 Indemnification. To the fullest extent permitted by law, Design-Builder agrees to indemnify, defend, and hold harmless Owner and its Affiliates, officers, directors, employees, agents, representatives,

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subsidiaries, successors, and assigns (collectively, "Indemnitees") from and against any and all liability, including, but not limited to, claims, damages, losses, expenses, suits, and demands, including, but not limited to, attorneys' fees, arising out of or related in any way, directly or indirectly, to these Terms and Conditions or any Purchase Order that is otherwise subject to these Terms and Conditions, or related in any way to Design-Builder's, its affiliates, employees, agents, assigns or its Subcontractors' or their agents' performance of the Work provided that such claim, damage, loss or expense, is attributable to tangible property other than the Work or bodily injury, sickness, disease or death, caused in whole, or in part, by any act or omission of Design-Builder, its affiliates, employees, agents, assigns or, any Subcontractor or any of their respective direct or indirect employees or agents for whose acts they may be liable. Such obligation shall not negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution that exists in favor of the Indemnitees. Such obligation to indemnify, defend, and hold harmless shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder or anyone directly or indirectly employed by Design-Builder, or by the provisions of any applicable workers compensation law limiting the tort or other liability of any employer on account of injuries to the employer's employees. Except as may be otherwise provided by applicable law or any governmental authority, Owner's right to indemnification under this Section shall not be impaired or diminished by any act, omission, conduct, misconduct, negligence, or default (other than gross negligence or willful misconduct) of Owner or any employee of Owner who contributed or may be alleged to have contributed thereto. Design-Builder shall impose identical duties upon all Subcontractors.

§ A.3.17.1.1 Intentionally Deleted.

§ A.3.17.1.2 Severability. To the extent any state or other applicable law may prohibit any application of all or any part of Design-Builder's indemnity obligations, it is the intent of the parties that the offending language is severable, in part or in whole, and that the remaining indemnity obligations apply, in all circumstances, applications, and situations, to the fullest extent permitted by law.

§ A.3.17.1.3 Pollution Indemnification. Design-Builder agrees to perform all required Work under the Design-Build Documents, including disposition of resulting Waste Materials, in compliance with all applicable Laws. To the fullest extent permitted by law, Design-Builder agrees to indemnify, defend, and hold harmless Indemnitees from any and all liability, including, but not limited to, losses, claims, costs, causes of action, liabilities, damages or expenses (including attorneys' fees) relating to claims by governmental authorities, or third parties arising out of or relating to the storage, disposal, discharge, or emission of contaminants or hazardous, toxic, noxious, or harmful substances caused by, in whole or in part, Design-Builder's or its affiliates', employees, agents, assigns, or its Subcontractors' acts or omissions and including claims made or asserted against Indemnitees arising out of or related to such Work and alleging a failure to comply with any Environmental Requirements. Design-Builder further agrees to fully remediate to Residential Remediation Objectives, Background Concentrations, or Class I Standards in 35 Ill. Adm. Code Part 742 - Tiered Approach to Corrective Action Objectives standards and properly dispose of any and all known and unknown contaminants or hazardous, toxic, noxious, or harmful substances that are discovered or identified during the Project and to indemnify, defend, and hold harmless Indemnitees from any and all liability to the same extent as in the immediately preceding sentence. Design-Builder shall notify Owner in writing upon receipt of any material at the Project Site requiring Material Safety Data Sheets, and Design-Builder shall promptly provide the same to Owner; furthermore, Design-Builder shall remove all unused Materials and non-Waste Materials from the Project Site upon completion of the Work and properly dispose of all such unused Materials and Waste Materials.

§ A.3.17.1.4 Patent Indemnification. Design-Builder shall pay all royalties and license fees that may be payable on account of performance or use of any of the Work. Design-Builder agrees to indemnify, defend, and hold Indemnitees harmless from any claims arising from or based on (in whole or in part) an allegation that the Work or any deliverable provided by Design-Builder (including all Work Product as that term is defined in Article 30 hereof) or Indemnitees' use thereof or the Design-Builder's performance of the Work infringes any patent, trade secret, trademark, copyright, or other intellectual property or proprietary right of any third party. In the event that Indemnitees' use of the Work, the Work Product or any other deliverable under the Design-Build Documents is enjoined, Design-Builder shall, at the Indemnitee's option, either (a) secure for Indemnitees the perpetual right to continue the use thereof with the same rights that Indemnitees had prior to the injunction, or (b) replace or modify the infringing part of the Work to make it non-infringing in a manner that is acceptable to the Indemnitee in the Indemnitee's sole discretion.

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§ A.3.17.1.5 **Indemnification for Claims by Governmental Authorities.** Design-Builder agrees to indemnify, hold harmless, and upon request, defend Indemnitees from any claim, liability, damage, expense, suit, or demand (including, without limitation, reasonable attorneys' fees and court costs) for claims by governmental authorities or others (including Design-Builder's Subcontractors and the employees of Design-Builder, said Subcontractors, or Owner) of any actual or asserted failure of Design-Builder to comply with any Laws. Design-Builder shall indemnify, defend, and hold harmless Indemnitees from and against any claim, expense, fine, levy, penalty, liability, or tax of any kind, including but not limited to any employment, workers compensation, unemployment compensation, or any tax sought to be imposed on Owner by any governmental authority or person on the grounds that Design-Builder or any of Design-Builder's employees is an employee of Owner. Design-Builder further agrees to indemnify, defend, and hold harmless Indemnitees from and against any costs of litigation and reasonable attorneys' fees incurred by Indemnitees in the course of any proceedings in which any such claim, expense, fine, levy, penalty, liability, or tax is sought to be imposed on Indemnitees.

§ A.3.17.1.6 **Labor Indemnification.** Design-Builder shall indemnify, hold harmless, and, at the affected Indemnitee's request, defend Indemnitees from all claims, liability, damages, and expenses (including reasonable attorneys' fees and court costs) arising out of (a) a labor dispute, or (b) claims under a collective bargaining agreement or project labor agreement, if such disputes or claims are asserted by employees of either Design-Builder or a Subcontractor, their bargaining representatives, or employee benefit trust funds.

§ A.3.17.1.7 **Professional Liability.** For the types of claims normally covered by Architect's, Engineer's or Design-Builder's professional errors and omissions insurance, Design-Builder agrees to the fullest extent permitted by law to indemnify, and hold harmless the Indemnitees against damages, liabilities, and costs arising from the negligent acts of Design-Builder in the performance of professional services under the Design-Build Documents. Design-Builder shall not be obligated to indemnify the Indemnitee for the Indemnitee's own negligence.

§ A.3.17.1.8 **Survivability.** Except for Design-Builder's pollution indemnity obligations, Design-Builder's obligations under this Article shall survive any termination of the Terms and Conditions, the Work, or any Purchase Order. Design-Builder's pollution indemnity obligations shall terminate upon substantial completion of the Project.

§ A.3.17.1.9 **Anti-Indemnity Prohibitions.** With respect to projects for the construction, alteration, repair or maintenance of a building, structure, or other work dealing with construction, or for any moving, demolition, or excavation connected therewith, Indemnitees shall not be indemnified for their own negligence to the extent prohibited by law.

§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 **Time Limits on Claims.** Claims (other than warranty claims) by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 **Continuing Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make undisputed payments in accordance with the Design-Build Documents.

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§ A.4.1.4 Claims for Concealed or Unknown Conditions. As an affiliate of seller of the real estate underlying the Project, Design-Builder is fully familiar with and responsible for the conditions of the Project site and shall be fully responsible for conditions encountered at the site even to the extent that such conditions are (1) subsurface or otherwise concealed physical soils conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents. As such, there shall be no extensions of Time or claims for increase in the Contract Sum or Guaranteed Maximum Price as a result of such conditions

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time due to Force Majeure, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary. Force Majeure means acts of nature, fire, explosion, flood, earthquake, tornado, riot, war, insurrection, sabotage, terrorism, or governmental acts and decrees or failure to act, all that in fact delay the critical path and Design-Builder's ability to achieve Substantial Completion within the Contract Time, are beyond Design-Builder's control and are not caused by Design-Builder.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were so abnormal for the period of time could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 30 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 Intentionally Blank.

§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Design-Builder 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.

Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, and Design-Builder could not have reasonably anticipated such enactment or revision in the exercise of reasonable

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care, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 Decision by Neutral. Intentionally Blank.

§ A.4.2.2 Decision by Owner. The Owner shall provide an initial decision on all Claims. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Section A.4.2.2 shall be in writing, shall state the reasons therefore and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

§ A.4.2.4 In the event of a Claim against the Design-Builder, the Owner shall be entitled to, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner shall be entitled to, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.5 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the JAMS Construction Mediation Rules in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the Chicago office of JAMS. Mediation shall proceed within 30 days of written demand. All communications and proceedings in mediation shall be in the nature of settlement discussions and shall not be admissible in later proceedings. If mediation has not concluded within 45 days of written demand, either party may pursue its rights but only in the Circuit Court of the jurisdiction in which the Project is located.

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ A.4.4 ARBITRATION

Intentionally deleted.

(Paragraphs deleted)

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 The Design-Builder, within 7 days of execution of this Agreement, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

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§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

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

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

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

§ A.6.2 MUTUAL RESPONSIBILITY

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

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

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§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.1.3 No course of conduct, industry custom or practice, or dealings between the parties and no claim that the Owner has been unjustly enriched by any change in the Work shall govern without a written, signed Change Order. Nor shall Design-Builder make or be entitled to claim compensation for cumulative impacts of changes or directions. Design-Builder's sole remedy for changes shall be governed by Change Orders provided herein.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

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

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for reasonable costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following plus reasonable allowance for overhead and profit:

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

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change in the design or scope of the Work that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. The Owner and Design-Builder shall equally split any savings as a result of approved Change Orders for value engineering.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

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§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

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

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by Force Majeur as defined herein, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. Provided, however, that adjustments in the Contract Time will be permitted for delays only to the extent that such delay (i) was not caused by Design-Builder, in whole or in part, and (ii) could not have been limited, mitigated or avoided by the proper planning, scheduling or other actions of Design-Builder and (iii) is of a duration not less than one half (1/2) day.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

§ A.8.3.3 This Section A.8.3 precludes recovery of damages for delay caused by Design-Builder or as a result of force majeure event. Design-Builder's sole remedy for delays caused by Owner shall be extension of the Contract Time and actual cost for overhead and general conditions.

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

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§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Upon execution of this Agreement, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum, changes in the Design by Change Order or Construction Change Directive, changes requested by Owner, or changes required by governmental entities.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

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

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .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 Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;

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- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents after notice of such failure by Owner and reasonable opportunity to cure the failure.

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

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 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 Design-Build Documents.

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

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1 and through no fault of Design-Builder, the Design-Builder submits a complete and properly prepared application for payment and Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon fourteen additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's actual reasonable costs of demobilization and remobilization which would not have otherwise been incurred but for the Owner's refusal to pay plus interest.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can beneficially

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occupy or use the Work or a portion thereof for its intended use and Owner has received verbal approval of the governmental authority and final inspection certificate from the Design Builder's Architect or Engineer.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive punch 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion. Design-Builder shall obtain the Certificate of Occupancy within 60 days of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

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

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment (including all warranties, guarantees and other deliverables required under the Design-Build Documents), the Owner shall promptly make such inspection and, when the Owner finds the Work

acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond (if satisfactory to the Owner in Owner's sole discretion) to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver only of known Claims by the Owner, reserving claims arising from or relating to:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;
- .4 latent defects and claim unknown as of the date of final payment;
- .5 claims arising out of indemnification or warranty obligations hereunder, which survive this Agreement.

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

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for all safety precautions and programs in connection with the performance of the Design-Build Contract, including compliance with OSHA and worker safety laws, regulations and ordinances, as well as security for the site, including but not limited to all Work, property and materials in and around the site. Owners contractors and forces will comply with all safety precautions and programs in connection with the Project when on site.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take all 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;

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

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a 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 Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 As an affiliate of the seller of the real estate underlying the Project, Design-Builder is fully familiar with and responsible for the conditions of the Project site and shall be fully responsible for conditions encountered at the site even to the extent that such conditions result from the presence of hazardous materials. 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 Design-Builder, the Design-Builder shall undertake all necessary measures to secure the Project site, retain appropriate professionals to identify, remediate and render harmless any such materials. No increase in the Contract Sum or extension of the Contract Time shall be allowed by virtue of the discovery, presence or remediation of hazardous materials, excepting only that if hazardous materials are discovered on the site that were not known to Design-Builder or its affiliates and the presence is not the result of an act or failure to act on the part of the Design-Builder or parties under its control, no increase in the Contract sum shall be allowed, but the Owner and Design-Builder will meet and mutually consider a reasonable extension of the Contract Time, pursuant to the procedures contained in Art. 4.1.7, to allow remediation of the site and upon the discovery of any such hazardous materials, the Owner and Design-Builder will mutually work to mitigate the impact of the hazardous materials to both the Contract Sum and the Contract Time.

§ A.10.3.2 No CERCLA Liability. Each of the parties hereto further acknowledges and agrees that no agency relationship is created under this Article between Owner and Contractor and nothing herein constitutes an agreement by one party on behalf of the other to arrange for transport, treatment, or disposal of hazardous substances under Section 107 of the Federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), or any state analog thereof, as amended.

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§ A.10.3.3 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner and Owner's officers, directors, subsidiaries, related companies, consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property.

§ A.10.4 Intentionally deleted.

(Paragraphs deleted)

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7, but only to the extent that such emergency was through no fault of Design-Builder or anyone for whom Design-Builder is liable.

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in Ex. C, incorporated herein by reference, or as required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until two years following the date of final payment, unless Owner otherwise agrees to in writing.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning

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reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

§ A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Owner shall be responsible for providing certificates of insurance from its contractors and sub-contractors performing work on site naming Design-Builder and Panattoni Development Company, Inc., as additional insured and containing the same coverages required of Design-builder under this Section A.11, except builder's risk.

§ A.11.3.2 Owner shall indemnify and hold harmless Design-Builder and all its Affiliates, officers, directors, employees, agents, representatives, subsidiaries, successors, and assigns (collectively, "Indemnitees") from and against any and all liability, including, but not limited to, claims, damages, losses, expenses, suits, and demands, including, but not limited to, attorneys' fees, arising out of or related in any way, directly or indirectly, to work performed by Owner's contractors, or related in any way to Owner's, its affiliates, employees, agents, assigns or its Contractors or Subcontractors' or their agents' negligent performance of the work performed on the site, provided that such claim, damage, loss or expense, is attributable to tangible property or bodily injury, sickness, disease or death, caused in whole, or in part, by any negligent act or omission of Owner's contractors or sub-contractors, their affiliates, employees, agents, assigns or, or any of their respective direct or indirect employees or agents for whose acts they may be liable. Such obligation shall not negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution that exists in favor of the Indemnitees. Such obligation to indemnify, defend, and hold harmless shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Owner or anyone directly or indirectly employed by Owner. Except as may be otherwise provided by applicable law or any governmental authority, Design-Builder's right to indemnification under this Section shall not be impaired or diminished by any act, omission, conduct, misconduct, negligence, or default (other than gross negligence or willful misconduct) of Design-Builder or any employee of Design-Builder who contributed or may be alleged to have contributed thereto. Owner shall impose identical duties upon all of its Contractors and Subcontractors.

§ A.11.4 PROPERTY INSURANCE

§ A.11.4.1 In addition to the coverages identified in Ex. C, the Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 Intentionally deleted.

§ A.11.4.1.3 If the property insurance requires deductibles, the Design-Builder shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance may cover portions of the Work stored off the site and also portions of the Work in transit.

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§ A.11.4.1.5 *Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.*

§ A.11.4.2 *Boiler and Machinery Insurance. Intentionally deleted.*

§ A.11.4.3 *Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.*

§ A.11.4.4 *Intentionally deleted.*

§ A.11.4.5 *Intentionally deleted.*

§ A.11.4.6 *Intentionally deleted.*

§ A.11.4.7 *Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their officers, directors, subsidiaries, insurers, employees, consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.*

§ A.11.4.8 *A loss insured under Design-Builder's property insurance shall be adjusted by the Design-Builder and Owner jointly and made payable to the Design-Builder and Owner, jointly.*

§ A.11.4.9 *Intentionally deleted.*

§ A.11.4.10 *Intentionally deleted.*

§ A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 *The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract. If Owner requires such bonds, Design-Builder shall be entitled to a change order in the sum of the actual costs of such bonds.*

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 *If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.*

§ A.12.1.2 *If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If*

such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A.12.1.3 Owner specifically reserves the right to require notice prior to certain installations so that such installations may be observed or tested by appropriate professionals, including but not limited to concrete pours and structural elements of the Work. Design-Builder agrees to cooperate by giving Owner sufficient advance notice prior to such Work to allow for observation or testing. If Owner requests such advance notice and Design-Builder fails or refuses to supply it, or fails or refuses to supply it sufficiently in advance of the Work that Owner is unable to arrange for observation or testing by appropriate professionals, such Work shall be uncovered, tested and restored in accordance with this Article 12 at Design-Builder's expense.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build 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 restoration of such Work to "like new" condition, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder 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 Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty, but only for patent defects. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

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

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

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

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

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

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

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

§ A.13.4 RIGHTS AND REMEDIES

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

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder 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 Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1 and are nevertheless required through no fault of Design-Builder, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

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§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

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

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

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

The statutes of repose and limitation applicable to this Agreement shall be governed by Illinois law.

(Paragraphs deleted)

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 the Owner has failed to make payment to the Design-Builder in accordance properly due and not disputed in good faith in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

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

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit or other damages.

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

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

- .1 persistently refuses or fails, following written notice, to supply enough properly skilled workers or proper materials after notice of such refusal or failure by Owner and reasonable opportunity to cure;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction after notice of such disregard by Owner and reasonable opportunity to cure; or
- .4 otherwise is guilty of a breach of a provision of the Design-Build Documents.

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§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine, not to exceed 60 days.

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

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

§ A.14.4 Intentionally Deleted.

§ A.15 Equal Opportunity/Nondiscrimination.

§ A.15.1 **Equal Opportunity.** It is Owners policy that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals have the maximum practicable opportunity to participate in the performance of contracts let by Owner. Design-Builder hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of the Work. Design-Builder shall, unless exempt, comply with the federal regulations, as amended, pertaining to nondiscrimination and affirmative action (generally part 60-1 of Title 41 of the Code of Federal Regulations), including, but not limited to, the following, all of which are incorporated herein by reference: (i) Affirmative Action Compliance Program (41 CFR 60-1.40); (ii) Affirmative Action - Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); (iii) Affirmative Action - Handicapped Workers (41 CFR 60-741.4); (iv) Equal Opportunity (41 CFR 60-1.4); (v) Employer Information Report SF-100, annual filing (41 CFR 60-1.7); (vi) Fair Labor Standards Act of 1938; (vii) Prohibition of Segregated Facilities (41 CFR 60-1.8); and (viii) Small Business Concerns, Small Disadvantaged Business Concerns, and Women Owned Business Concerns (48 CFR Chapter 1, Subpart 19.7). The Design-Builder shall also comply, unless exempt, with any applicable state laws pertaining to nondiscrimination and affirmative action.

§ A.15.2 **Nondiscrimination.** Design-Builder certifies that it does not and will not maintain or provide for employees any segregated facilities at any of its establishments, and that it does not and will not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. As used herein, the term "facilities" means waiting rooms, work areas, restaurants and other eating areas, time clocks, rest rooms, wash rooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees; and the term "segregated" means to separate individuals on a basis of race, color, religion, or national origin, because of habit, local custom or otherwise. Design-Builder understands and agrees that a breach of the certification or assurance herein contained is a violation of the equal opportunity clause required by Executive Order No. 11246 of September 24, 1965, as

amended, and subjects Design-Builder to the regulations issued by the Secretary of Labor on May 21, 1968, (33 FR 7804) constituting 41 CFR Part 60-1. Design-Builder agrees and undertakes to obtain the same or a substantially similar certification and assurance from each proposed Subcontractor before issuing any subcontract in excess of \$10,000. Design-Builder understands that this certification shall be effective and valid for one year from the effective date of the applicable Purchase Order. Design-Builder understands that the penalty for making false statements in this certification is prescribed in 18 USC 1001.

§ A.15.3 Reporting. On a quarterly basis or as otherwise agreed upon by the parties, Design-Builder shall prepare and submit to Owner a detailed report that confirms Design-Builder's utilization of diverse businesses in its subcontracting activities. The report should reflect both direct and indirect dollars spent throughout the term of these Terms and Conditions. If requested by Owner, Design-Builder shall submit to Owner current certification establishing Design-Builder as a diverse business operation.

§ A.16. Audits Unless otherwise required by Laws, Owner's representatives shall have, during the term of this Agreement and for three years thereafter, access at all reasonable times, and upon twenty-four hours notice, to all of Design-Builder's and its Subcontractors' accounts and records of any description, including but not limited to: (a) computer files; (b) records pertaining to this Agreement relating to the quantity, quality, and progress of the Work; (c) reimbursable costs; (d) amounts claimed by Design-Builder; (e) estimates of cost for fixed rates including those applicable to proposed changes; (f) determining compliance with applicable laws, codes or standards and/or any of the provisions contained in these Design-Build Documents; and (g) for any other reasonable purpose. Payment or payments shall not be deemed a waiver of any rights of Owner to audit or to have adjustments made. Design-Builder's accounts/records shall be kept in accordance with generally accepted accounting principles.

(Paragraphs deleted)

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Insurance and Bonds

for the following PROJECT:

(Name and location or address)

Design and construction of Regional Reporting Center on approximately 4.54 acres of vacant property located at 1665 Birchwood Avenue, Des Plaines, Illinois

THE OWNER:

(Name and address)

Northern Illinois Gas Company d/b/a Nicor Gas Company
1844 Ferry Road
Naperville, Illinois

THE DESIGN-BUILDER:

(Name and address)

Panattoni Construction, Inc.
8775 Folsom Blvd., Suite 100
Sacramento, California 95825
Attn: Bob Christenson

Panattoni Construction, Inc.
6250 N. River Road, Suite 4050
Rosemont, Illinois 60018
Attn: John Wagman

ADDITIONS AND DELETIONS:

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE C.1

(Paragraphs deleted)

This Exhibit C is incorporated into and forms a part of the Standard Form of Agreement Between Owner and Design-Builder between the parties. To the extent of any conflict between this Exhibit C and the balance of the agreement, this Exhibit C shall govern.

The Owner and Design-Builder (also referred to below as "Contractor") shall provide policies of liability insurance as follows:

1.1 General Insurance Requirements. Contractor shall provide and maintain, and shall require each Subcontractor (regardless of tier) to provide and maintain, in effect during the term of these General Conditions, and for a period of two years thereafter, the following minimum insurance coverages, which insurance shall be placed with insurance companies rated A minus VII or better by Best's Key Rating Guide and approved by Owner. Such insurance companies shall be authorized to do business in the jurisdiction in which the Project is located. Prior to the commencement of any Work, Contractor shall furnish properly executed certificates of insurance, including the required amendatory riders and endorsements. Contractor shall not make any changes in or allow the required insurance coverages to lapse without Owner's prior written approval. All insurance policies shall be endorsed to contain a provision giving Owner thirty days prior written notice by registered mail of any cancellation or non-renewal of that policy or material changes in coverage. At the time of signing these General Conditions, Owner may require Contractor to provide evidence acceptable to Owner that demonstrates that Contractor will be able to secure the insurance required by these General Conditions. Owner reserves the right, at its own cost, to require Contractor to provide and maintain additional coverages in the event that the particular Work involves unusual risks. If any of the required insurance coverages contain aggregate limits applying to other operations of Contractor outside Work performed for Owner pursuant to any Purchase Order or other Agreement and such limits are diminished by an incident, occurrence, claim, settlement or judgment against such insurance, Contractor shall take immediate steps to restore such aggregate limits but only to the limits required under these General Conditions or shall provide such other insurance protection for such aggregate limits. If, in order to satisfy the insurance requirements hereunder, any Subcontractor incurs reasonable additional insurance premiums to increase any of its insurance coverages above a policy limit of \$1,000,000, Owner agrees to enter into a Change Order under the Contract Documents to adjust the Contract Sum for the amount of such reasonable additional premiums or proceed in accordance with A.11.2.2.

1.2 Insurance Required For All Projects.

(a) Worker's compensation insurance with statutory benefits and limits, as required by the state in which the Work is to be performed. Such insurance shall contain benefits and limits in full compliance with all state and federal requirements. It shall also include Broad Form All States and Voluntary Compensation Endorsements and Employer's Liability insurance with limits of not less than \$2,000,000 per accident, \$2,000,000 per disease and a \$2,000,000 policy limit on disease. If coverage is obtained from a state fund, Contractor will purchase "Stop Gap" coverage, with minimum limits of \$2,000,000 per occurrence, from a commercial insurer meeting the requirements of this Article.

(b) Automobile liability insurance for owned, non-owned, leased and hired vehicles with a combined single limit per occurrence for bodily injury and property damage of not less than \$2,000,000.

(c) Commercial general liability insurance (CGL) with coverage consistent with ISO CG 0001 (10/98) in the following amounts: \$2,000,000 bodily injury and property damage combined single limit per occurrence; \$2,000,000 personal injury/advertising injury; \$2,000,000 products/completed operations aggregate; and \$2,000,000 general aggregate per project. The CGL policy shall have a per project endorsement to require these limits to apply only to each individual Project. Products/completed operations coverage shall be maintained for four years after final payment for the Project.

(d) Contractor is responsible for obtaining Builder's Risk insurance sufficient to cover the total cost of the project until project is accepted by Owner. Owner will be responsible for payment of the deductible up

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to 5% and 2% of the property value for the earthquake and flood coverages, respectively, for all losses sustained.

(e) The insurance limits required by this Section 1.2 may be satisfied by a combination of primary and excess policy coverages.

1.3 Insurance Required for Designated Projects.

(a) Professional liability insurance: Contractor, its Architect and Engineer shall purchase professional liability insurance with a combined single limit, including umbrella coverage, of not less than \$1,000,000 per occurrence.

1.4 Additional Insureds. All liability insurance policies shall name Owner, its officers, directors, employees, agents, successors, and assigns as additional insureds ("Additional Insureds"), shall provide coverage for their liability arising out of Contractor's Work, and shall maintain the required coverages for a period of not less than two years from the date Owner and Contractor execute a Form of Final Completion. Contractor shall cause its Subcontractors to name Owner, officers, directors, employees, agents representatives, subsidiaries, successors, and assigns as additional insureds on all policies (except workers compensation, employers liability and professional liability). Compliance shall be evidenced by a certificate of insurance and a copy of the additional insured endorsement from any Subcontractor retained by Contractor that shall comply with these General Conditions and be made available to Owner upon request. Except for worker's compensation and employer's liability insurance, Contractor agrees, with respect to all insurance provided or required in connection with these General Conditions, to endorse or require each policy to: (a) stipulate that such insurance is primary and is not additional to, or contributing with, any other insurance carried by, or for the benefit of the Additional Insureds; (b) for the insurance described in Sections 1.2(c) and 1.2(d), add Additional Insureds as an additional insured using the following wording on the policy and any certificate of insurance: "It is agreed that the 'Persons Insured' provision of this policy is amended to include Owner, its officers, directors, employees, agents, representatives, subsidiaries, successors, and assigns as additional insureds, jointly and severally (collectively, "Additional Insureds"), with respect to any coverage such as is afforded by this policy for its liability arising out of the Work of the Named Insured. It is further agreed that this insurance shall not be prejudiced as to the Additional Insureds by any act or negligence, error, or omission of the Named Insured as respects payment of premium, reporting of claims, or any other duties required of the Named Insured by the policy;" and, (c) for the insurance described in Sections 1.2(c) and 1.23(d), contain a cross liability/severability of interest endorsement.

1.5 Evidence of Insurance. Contractor shall provide evidence of the required insurance coverage and file with Owner's Designated Representative a certificate of insurance acceptable to Owner certifying to the foregoing coverages prior to commencement of the Work. The certificate shall not be limited to an individual Project or Purchase Order or other Agreement but shall be applicable to all Projects or Purchase Orders or other Agreements entered into between Owner and Contractor until its expiration date, if any, however, such certificate will not evidence coverage of any contractors or sub-contractors retained by Owner to provide work on the Project. If the certificate has an expiration date, the Contractor shall furnish updated insurance certificates to Owner's Designated Representative until the Work under all Projects or Purchase Orders or other Agreements is completed. Each certificate shall include: (a) the name of the insurance company, policy number, and expiration date; (b) the coverages required whether for claims made or occurrence, and the limits on each, including the amount of deductibles or self-insured retentions (which Contractor shall pay); (c) a statement that Owner shall receive thirty-days notice of cancellation or modification of any of the policies which may affect Owner's interest; (d) a statement that Owner, its Affiliates, officers, directors, employees, agents, representatives, subsidiaries, successors, and assigns have been named additional insureds on all applicable policies with respect to liability arising out of the Named Insured's Work; and (e) if a vehicle is carrying Owner's Hazardous Substances, the certificate must show that the vehicle is insured for limits specified in the Motor Carrier Act of 1980, as amended.

1.6 Failure to Pay Premiums. If Contractor's insurance is canceled because Contractor failed to pay its premiums or any part thereof, or if Contractor fails to provide and maintain certificates as set forth herein, Owner shall have the right, but shall not be obligated, to (a) immediately terminate the applicable Purchase Order or other Agreement with prior notice to Contractor, (b) withhold payment of Contractor's invoices until Owner has received satisfactory evidence of Contractor's payment of insurance premiums, or (c) pay such premium to the insurance company or to obtain such coverage from other companies and to deduct such payment from any sums that may be

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AIA Document A141™ – 2004 Exhibit C. Copyright © 2004 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 14:04:19 on 10/29/2008 under Order No. 1000340920_2 which expires on 1/29/2009, and is not for resale.

User Notes:

(3332356295)

due or become due to Contractor, or to seek reimbursement for said payments from Contractor, which sums shall be due and payable immediately upon receipt by Contractor of notice from Owner. In the event of any failure by Contractor to comply with the insurance requirements of these General Conditions, Owner may, without in any way compromising or waiving any right or remedy at law or in equity, upon five-days written notice to Contractor, purchase such insurance, at Contractor's expense, provided that Owner shall have no obligation to do so, and, if Owner shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such costs incurred by Owner shall be promptly reimbursed by Contractor and/or may be withheld from any payment due Contractor.

1.7 Waiver of Rights. Owner and Contractor waive all rights against each other and their Affiliates, officers, directors, employees, agents, representatives, subsidiaries, successors, and assigns for recovery of damages to the extent these damages are covered by the automobile liability, commercial general liability, or umbrella liability insurance obtained by Contractor.

1.8 Waiver of Subrogation. Unless otherwise required by applicable law, all of the insurance policies (except workers compensation) that apply to this Agreement shall provide a waiver of all rights of subrogation that Contractor's insurance carrier might exercise against Owner or any Additional Insured.

1.9 Subcontractors. In the event that Contractor elects to perform a portion of the Work through the use of Subcontractors, Contractor shall require such Subcontractors to comply with the insurance requirements of this Article, subject to the provisions of A.11.2.2. Contractor shall contractually obligate its Subcontractors to promptly advise Contractor of any lapse of the requisite insurance coverages, and Contractor shall promptly advise Owner of same. Contractor assumes all liability for its Subcontractors' failure to comply with the insurance provisions of these General Conditions.

1.10 Breach of Terms and Conditions. Failure to obtain and maintain the required insurance shall constitute a material breach of contract for which Owner will have all rights and remedies set forth herein, including but not limited to, those set forth in Section 1.6 of these General Conditions, and Contractor will be liable for any and all costs, liabilities, damages, and penalties (including attorneys' fees, court costs, and settlement expenses) resulting to Owner from such breach, unless a written waiver of the specific insurance requirement is provided to Contractor by Owner.

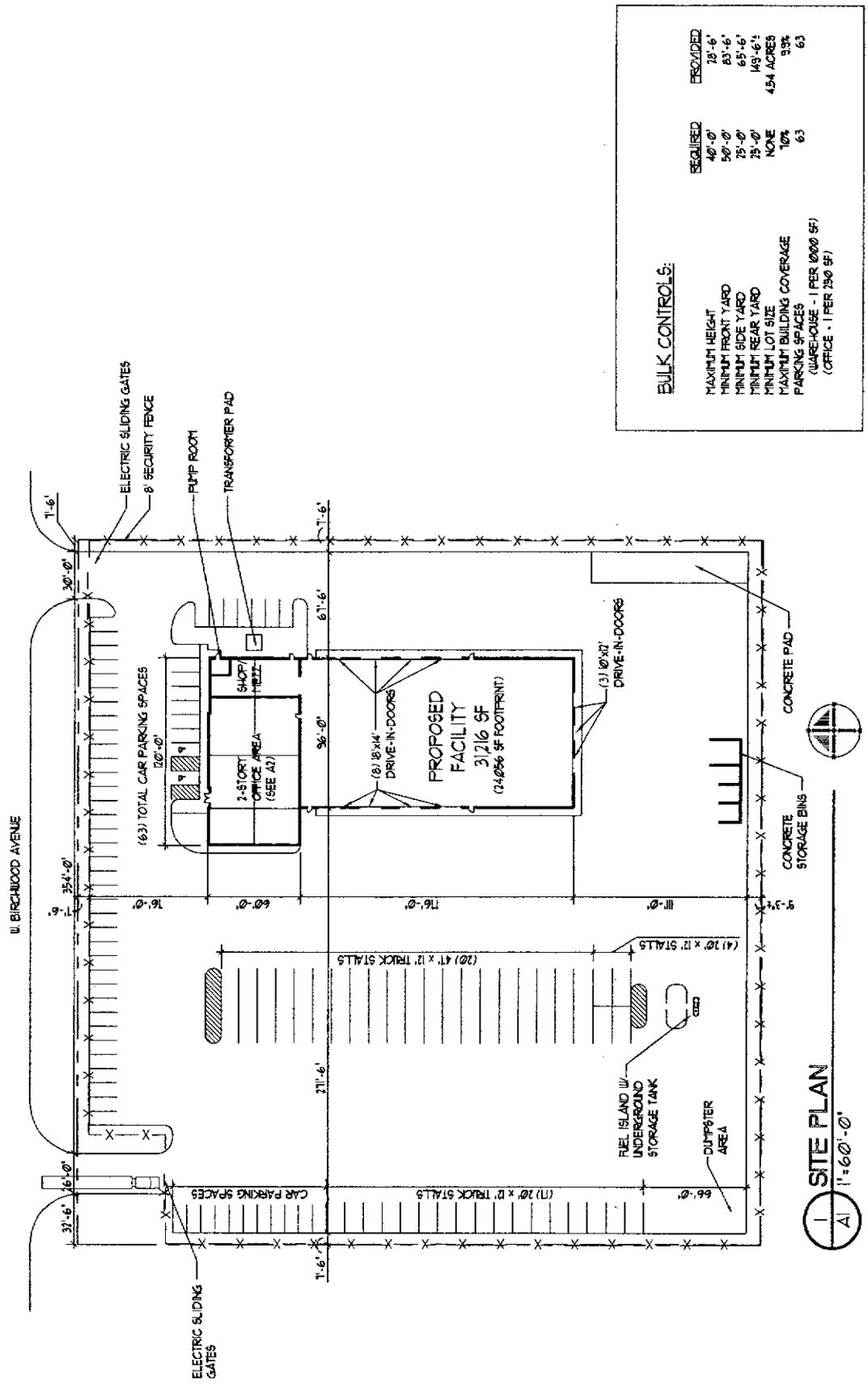
1.11 Non-Waiver. Failure of Contractor to provide insurance as herein required or failure of Owner to require evidence of insurance or to notify Contractor of any breach by Contractor of the requirements of this Article shall not be deemed to be a waiver by Owner of any of the terms of these General Conditions, nor shall they be deemed to be a waiver of the obligation of Contractor to defend, indemnify, and hold harmless Owner as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of Contractor and independent of the duty to furnish a copy or certificate of such insurance policies.

1.12 Contractor's Commencement of Work Without Insurance. Commencement of Work without the required certificates of insurance, or without compliance with any other provision of these General Conditions, shall not constitute a waiver by Owner of any rights in these General Conditions.

1.13 Accident Report. Contractor shall furnish Owner with copies of any accident reports sent to Contractor's insurance carriers covering accidents occurring in connection with or as a result of the performance of the Work under the Contract Documents or its receipt or notice of any claim by a third party, or any occurrence that might give rise to such a claim.

1.14 Contractor Obligations Not Limited. None of the requirements contained herein as to types, limits, or Owner's approval of insurance coverage to be maintained by Contractor are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Contractor under these General Conditions, any other agreement with Owner, or otherwise provided by law.

(Table deleted)(Paragraphs deleted)(Paragraph deleted)



BULK CONTROLS:

| | REQUIRED | PROVIDED |
|-----------------------------|----------|-----------|
| MAXIMUM HEIGHT | 40'-0" | 28'-6" |
| MINIMUM FRONT YARD | 50'-0" | 83'-6" |
| MINIMUM SIDE YARD | 25'-0" | 65'-6" |
| MINIMUM REAR YARD | 25'-0" | 148'-6" |
| MINIMUM LOT SIZE | NONE | 454 ACRES |
| MAXIMUM BUILDING COVERAGE | 10% | 23% |
| PARKING SPACES | 63 | 63 |
| (WAREHOUSE - 1 PER 1000 SF) | | |
| (OFFICE - 1 PER 250 SF) | | |

AI SITE PLAN
1" = 60'-0"

Northern Illinois Gas Company d/b/a Nicor Gas Company
Response to: Illinois Commerce Commission
Ill.C.C. Docket No. 08-0363
MEM Seventh Set of Data Requests

MEM 7.09 Q. Provide a detailed explanation as to why the cost of the NRRC has increased from \$5.9 million to \$12.5 million. Provide all related workpapers that show how the new cost is derived.

MEM 7.09 A. The original estimate of \$5.9 million for a new NRRC represented a high level estimate for constructing a new facility. This estimate was made in 2007. The increase in the estimated cost is attributable primarily to increases in land and site cost (\$3.0 million), increased construction cost (\$1.0million), professional services and fees (\$.7 million), fixtures and equipment (\$.9 million) and the inclusion of a project contingency (\$1 million). See attached Confidential Exhibit 1.

Witness: Rocco J. D'Alessandro

**Master Project Budget Full
Scope Summary Report**

MEM 7.09
Exhibit 1
Page 1 of 4

PROJECT NAME: **Nicor DesPlaines - PRELIMINARY**

DATE: August 12, 2008
AREA (RSF): 26,000

| Trade Description | | Account Totals | | Division Totals | | |
|---|------------------------------------|----------------------|------------------|----------------------|------------------|----------------|
| 02 PROFESSIONAL DESIGN FEES | | | | | | |
| 0210 | Architect | \$ 58,520 | \$ 2.25 | | | |
| 0220 | Civil Engineer | \$ 20,430 | \$ 0.79 | | | |
| 0230 | Structural Engineer | \$ - | \$ - | | | |
| 0240 | MEP Engineer | \$ - | \$ - | | | |
| 0250 | Communications Consultant | \$ - | \$ - | | | |
| 0260 | Security Consultant | \$ - | \$ - | | | |
| 0270 | Audio and Visual Consultant | Not Included | \$ - | | | |
| 0280 | L.E.E.D. Consultant | \$ 88,500 | \$ 3.40 | \$ 167,450 | \$ 6.44 | 1.34% |
| 03 CONSULTING AND MISCELLANEOUS FEES | | | | | | |
| 0310 | Project Management Consultant | \$ 63,000 | \$ 2.42 | | | |
| 0320 | Legal | \$ 50,000 | \$ 1.92 | | | |
| 0330 | Real Estate Consultant Fees | \$ 416,000 | \$ 16.00 | \$ 529,000 | \$ 20.35 | 4.24% |
| 04 CONSTRUCTION | | | | | | |
| 0410 | Land and Site Development Fees | \$ 5,214,000 | \$ 200.54 | | | |
| 0420 | Testing and Inspection | \$ 27,100 | \$ 1.04 | | | |
| 0430 | Utility Systems and Extension Fees | \$ - | \$ - | | | |
| 0440 | Site/ Core and Shell Construction | \$ 3,237,900 | \$ 124.53 | | | |
| 0445 | Developer Fee | \$ 667,000 | \$ - | | | |
| 0450 | Interior Construction | \$ 686,400 | \$ 26.40 | | | |
| 0450 | Permit Fees | \$ 34,000 | \$ 1.31 | \$ 9,866,400 | \$ 379.48 | 79.02% |
| 05 FURNITURE, FIXTURES AND EQUIPMENT | | | | | | |
| 0510 | Furniture | \$ 250,000 | \$ 9.62 | | | |
| 0520 | Furnishings | \$ 10,000 | \$ 0.38 | | | |
| 0530 | Nicor Furnished Equipment | \$ 200,000 | \$ 7.69 | | | |
| 0540 | Audio / Visual Equipment | \$ 25,000 | \$ 0.96 | | | |
| 0550 | Security Equipment | \$ 100,000 | \$ 3.85 | | | |
| 0560 | Telephone and Communications | \$ 300,000 | \$ 11.54 | | | |
| 0570 | Food Service Equipment | Not Included | \$ - | | | |
| 0580 | Artwork | Not Included | \$ - | | | |
| 0585 | Building and Interior Signage | \$ 12,500 | \$ 0.48 | \$ 897,500 | \$ 34.52 | 7.19% |
| 06 RELOCATION COST | | | | | | |
| 0610 | Move Consultant | \$ - | \$ - | | | |
| 0620 | Move Contractor | \$ - | \$ - | \$ - | \$ - | 0.00% |
| 09 CONTINGENCY | | | | | | |
| 0910 | Project Contingency | \$ 1,025,400 | \$ 39.44 | \$ 1,025,400 | \$ 39.44 | 8.21% |
| TOTAL COST REQUIRING FUNDING | | \$ 12,485,750 | \$ 480.22 | \$ 12,485,750 | \$ 480.22 | 100.00% |

FUNDING

| | | | | | |
|-----------------------------|----------------------|------------------|----------------------|------------------|----------------|
| Nicor Funding | \$ 12,485,750 | \$ 480.22 | \$ 12,485,750 | \$ 480.22 | 100.00% |
| Grand Total of Funds | \$ 12,485,750 | \$ 480.22 | \$ 12,485,750 | \$ 480.22 | 100.00% |

Notes:

- 1 All design costs assume design/build contract with General Contractor for the Site Utilities and Core and Shell.
- 3 0330 - Real Estate Consulting Fees is an approximate number.
- 4 0410- Land costs based on Pannatoni Development proposal dated 8/12/08.
- 5 0440- Site/Core and Shell and Interior Construction cost based on Pannatoni Development proposal dated August 7, 2008
- 6 0510 - Furniture (work stations) is based on 12,490st office requirement.
- 8 Unless specifically noted, costs are considered budget allowances at this time due to current scope definition.
- 9 0910 - Overall budget includes 9.5% project contingency on select items due to current scope definition.
- 10 This budget should not be utilized for project submittal or approval, only for an initial estimation of costs.

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**Master Project Budget
Full Scope Detail Report**

MEM 7.09
Exhibit 1
Page 2 of 4

PROJECT NAME: Nicor DesPlaines - PRELIMINARY

DATE: August 12, 2008
AREA (RSF): 26,000

| Trade Description | Quantity | Unit | Unit Price | Total |
|--|----------|------|------------|----------------------|
| 02 PROFESSIONAL DESIGN FEES | | | | |
| 0210 Architect | | | | |
| Building Architect and general interior (based Harris Architects proposal) | 26,000 | SF | \$ - | Inc. in Construction |
| Interior Design - Office | 12,480 | SF | \$ 4.26 | \$ 53,200 |
| Architect - Reimb. Exp. (Allow. 10% of Fees) | Allow | | 10.00% | \$ 5,320 |
| Sub Total | | | | \$ 58,520 |
| 0220 Civil Engineer | | | | |
| Base Fee | 26,000 | SF | \$ - | \$ 20,430 |
| Engineer - Reimb. Exp. (Allow. 10% of Fees) | Allow | | 10.00% | \$ - |
| Sub Total | | | | \$ 20,430 |
| 0230 Structural Engineer | | | | |
| Structural Engineer | 26,000 | SF | \$ - | Inc. in Construction |
| Structural Engineer - Reimb. Exp. (Allow. 10% of Fees) | Allow | | 10.00% | \$ - |
| Sub Total | | | | \$ - |
| 0240 MEP Engineer | | | | |
| MEP Engineer - Building & Interior | 26,000 | SF | \$ - | Inc. in Construction |
| Tenant MEP Engineer - Reimb. Exp. (Allow. 10% of Fees) | Allow | | 10.00% | \$ - |
| Sub Total | | | | \$ - |
| 0250 Communications Consultant | | | | |
| Tele/Data Consultant | 26,000 | SF | \$ - | |
| Tele/Data Consultant - Reimb. Exp. (Allow. 10% of Fees) | Allow | | 15.00% | \$ - |
| Sub Total | | | | \$ - |
| 0260 Security Consultant | | | | |
| Security Consultant | 26,000 | SF | \$ - | |
| Sub Total | | | | \$ - |
| 0270 Audio and Visual Consultant | | | | |
| AV Consultant | 26,000 | SF | | Not Included |
| AV Consultant - Reimb. Exp. (Allow. 10% of Fees) | Allow | | 10.00% | |
| Sub Total | | | | \$ - |
| 0280 L.E.E.D. Consultant | | | | |
| L.E.E.D. Consultant | 26,000 | SF | \$ 1.92 | \$ 50,000 |
| 3rd Party Commissioning Agent | 26,000 | SF | \$ 1.35 | \$ 35,000 |
| L.E.E.D. Consultant - Reimb. Exp. (Allow. 10% of Fees) | Allow | | 10.00% | \$ 3,500 |
| Sub Total | | | | \$ 88,500 |
| 03 CONSULTING AND MISCELLANEOUS FEES | | | | |
| 0310 Project Management Consultant | | | | |
| Project Manager - Currently indicated as percentage of construction and design | | | 1.25% | \$ 60,000 |
| Project Management - Reimb. Exp. (Allow. 5% of Fees) | Allow | | 5.00% | \$ 3,000 |
| Sub Total | | | | \$ 63,000 |
| 0320 Legal | | | | |
| Attorney Fees | Allow | | \$ - | \$ 50,000 |
| Sub Total | | | | \$ 50,000 |
| 0330 Real Estate Consultant Fees | | | | |
| Real Estate Consultant Fees (6% of Land Cost and 3% of Building Cost) | 25,000 | SF | \$ 16.00 | \$ 416,000 |
| Sub Total | | | | \$ 416,000 |
| | | | | \$ 529,000 |

NRC 008711

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Nicor Gas Ex. 37.7
Page 4 of 5

**Master Project Budget
Full Scope Detail Report**

MEM 7.09
Exhibit 1
Page 2 of 4

PROJECT NAME: Nicor DesPlaines - PRELIMINARY

DATE: August 12, 2008
AREA (RSF): 26,000

| Trade Description | Quantity | Unit | Unit Price | Total |
|--|----------|------|------------|----------------------------|
| 04 CONSTRUCTION | | | | |
| 0410 Land and Site Development Fees | | | | |
| Land (\$/Land SF) (Assume 4.54 Acres Gross -) | | SF | #DIV/0! | \$ 5,200,000 |
| Tap on Fees & Fire District | 26,000 | SF | \$ | Inc. in Core & Shell |
| Legal and closing costs | 26,000 | SF | \$ | Inc. in Legal above |
| Land Lease Commission | 26,000 | SF | | Included in RE Consult Fee |
| RE taxes during construction | 26,000 | SF | \$ 0.15 | 4,000 |
| Builder's Risk and Title Insurance | 26,000 | SF | \$ 0.38 | 10,000 |
| Cook County Impact Fees | 26,000 | SF | \$ | Inc. in Core & Shell |
| PUD, Permits and Government Fees | 26,000 | SF | | Included in Permits |
| Other Permits and Inspection Fees | 26,000 | SF | | Included in Permits |
| Sub Total | | | | \$ 5,214,000 |
| 0420 Testing and Inspection | | | | |
| Soil Borings | 26,000 | SF | \$ 0.19 | 5,000 |
| Topog/Phase 1 | 26,000 | SF | \$ 0.17 | 4,500 |
| Plat of Survey | 26,000 | SF | \$ 0.00 | 100 |
| Compaction and Concrete Testing | 26,000 | SF | \$ 0.38 | 10,000 |
| Structural and Exterior Testing | 26,000 | SF | \$ 0.29 | 7,500 |
| Sub Total | | | | \$ 27,100 |
| 0430 Utility Systems and Extension Fees | | | | |
| Electrical | 26,000 | SF | #VALUE! | Included Above |
| Phone and Data | 26,000 | SF | | Included Above |
| Water | 26,000 | SF | | Included Above |
| Sanitary | 26,000 | SF | | Included Above |
| Gas | 26,000 | SF | | Included Above |
| Sub Total | | | | \$ |
| 0440 Site/ Core and Shell Construction | | | | |
| Winter Conditions | Allow | | | |
| Site/Core and Shell Construction | 26,000 | SF | \$ 124.53 | 3,237,900 |
| Sub Total | 26,000 | | \$ 124.53 | 3,237,900 |
| 0445 Developer Fee | | | | |
| 3% of work controlled by Developer | 26,000 | SF | \$ | 667,000 |
| Sub Total | | | | \$ 667,000 |
| 0450 Interior Construction | | | | |
| Interior Construction | 26,000 | SF | \$ 26.40 | 686,400 |
| Sub Total | 26,000 | SF | \$ 26.40 | 686,400 |
| 0460 Permit Fees | | | | |
| Building Permit - Interior Build Out | Allow | LS | \$ | 34,000.00 |
| Sub Total | | | | \$ 34,000 \$ 9,866,400 |

NRC 008712

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Nicor Gas Ex. 37.7
Page 5 of 5

**Master Project Budget
Full Scope Detail Report**

MEM 7.09
Exhibit 1
Page 2 of 4

PROJECT NAME: Nicor Des Plaines - PRELIMINARY

DATE: August 12, 2008
AREA (RSF): 26,000

| Trade Description | Quantity | Unit | Unit Price | Total |
|---|--------------|------|-------------------------|--------------------------|
| 05 FURNITURE, FIXTURES AND EQUIPMENT | | | | |
| 0510 Furniture | | | | |
| Private Office, Work Stations, etc. | 43,000 | SF | \$ 5.81 | \$ 250,000 |
| Sub Total | | | | \$ 250,000 |
| 0520 Furnishings | | | | |
| Furnishings (Misc. Items, Waste Baskets, Etc.) | 26,000 | SF | \$ 0.12 | \$ 10,000 |
| Sub Total | | | | \$ 10,000 |
| 0530 Owner Furnished Equipment | | | | |
| Fueling Station | 26,000 | SF | \$ 7.69 | \$ 200,000 |
| Sub Total | | | | \$ 200,000 |
| 0540 Audio / Visual Equipment | | | | |
| Audio / Visual Equipment | 26,000 | SF | \$ 0.96 | \$ 25,000 |
| Misc. AV Equipment | | | | |
| Sub Total | | | | \$ 25,000 |
| 0550 Security Equipment | | | | |
| Security Equipment - Card Access | 26,000 | SF | \$ 3.85 | \$ 100,000 |
| Security Equipment - Surveillance Cameras, Monitors, etc. | | | | |
| Sub Total | | | | \$ 100,000 |
| 0560 Telephone and Communication | | | | |
| Equipment (must confirm with Nicor IT) | 26,000 | SF | \$ 11.54 | \$ 300,000 |
| Sub Total | | | | \$ 300,000 |
| 0570 Food Service Equipment | | | | |
| Appliances | 26,000 | SF | | Included in Construction |
| Food Service Equipment | | | Not Included | |
| Sub Total | | | | \$ - |
| 0580 Artwork | | | | |
| Art Program | | | Not Included | |
| Sub Total | | | | \$ - |
| 0590 Building and Interior Signage | | | | |
| Building Signage - Exterior/Interior | 25,000 | SF | \$ 0.75 | \$ 12,500 |
| Sub Total | | | | \$ 12,500 |
| | | | | \$ 897,500 |
| 06 RELOCATION COST | | | | |
| 0610 Move Consultant | | | | |
| Move Consultant | 26,000 | SF | \$ - | \$ - |
| Sub Total | | | | \$ - |
| 0620 Move Contractor | | | | |
| Move Contractor - Standard Office Move Assumption | | SF | \$ 1.50 | \$ - |
| Move Contractor - Specialty Equip (Training Meter Shop, Etc.) | | | Nicor Operating Expense | |
| Sub Total | | | | \$ - |
| 09 CONTINGENCY | | | | |
| 0910 Project Contingency | | | | |
| 02 PROFESSIONAL DESIGN FEES | \$ 167,450 | Cost | 9.50% | \$ 15,900 |
| 03 CONSULTING AND MISC. FEES | \$ 529,000 | Cost | 9.50% | \$ 50,300 |
| 04 CONSTRUCTION | \$ 9,199,400 | Cost | 9.50% | \$ 873,900 |
| 05 FURNITURE, FIXTURES & EQUIP. | \$ 897,500 | Cost | 9.50% | \$ 85,300 |
| 06 RELOCATION COST | \$ - | Cost | 9.50% | \$ - |
| 07 FINANCING FEES | \$ - | Cost | 0.00% | \$ - |
| Sub Total | | | | \$ 1,025,400 |
| | | | | \$ 1,025,400 |
| FUNDING | | | | |
| Funds | | | | |
| Nicor Funding to be determined | | | | |
| Sub Total | | | | \$ - |

NRC 008713

NICOR GAS COMPANY
Adjustment for Utility Plant - 2008 and 2009 Estimated Plant Additions
For the Test Year Ended December 31, 2009
(In Thousands)

| <u>Line No.</u> | <u>Year</u> (a) | <u>Actual Plant Additions</u> (b) | <u>Budgeted Plant Additions</u> (c) | <u>Variance Percentage (b) - (c) / (c)</u> (d) |
|-----------------|--|--------------------------------------|--|---|
| 1 | 2004 | 175,138 | 165,179 | 6.03% |
| 2 | 2005 | 186,425 | 194,727 | -4.26% |
| 3 | 2006 | 164,546 | 165,656 | -0.67% |
| 4 | 2007 | 159,022 | 164,204 | <u>-3.16%</u> |
| 5 | Four Year Average Percentage (Under) / Over Budget | | | <u><u>-0.52%</u></u> |

NICOR GAS COMPANY
Adjustment for Utility Plant - 2008 and 2009 Estimated Plant Additions
For the Test Year Ended December 31, 2009
(In Thousands)

| <u>Line No.</u> | <u>Year</u> (a) | <u>Actual Plant Additions</u> (b) | <u>Budgeted Plant Additions</u> (c) | <u>Variance Percentage (b) - (c) / (c)</u> (d) |
|-----------------|--|--------------------------------------|--|---|
| 1 | 2003 | 172,854 | 157,042 | 10.07% |
| 2 | 2004 | 175,138 | 165,179 | 6.03% |
| 3 | 2005 | 186,425 | 194,727 | -4.26% |
| 4 | 2006 | 164,546 | 165,656 | -0.67% |
| 5 | 2007 | 159,022 | 164,204 | <u>-3.16%</u> |
| 6 | Five Year Average Percentage (Under) / Over Budget | | | <u><u>1.60%</u></u> |

NICOR GAS COMPANY
Adjustment for Utility Plant - Scenarios
For the Test Year Ended December 31, 2009
(In Thousands)

Staff Ostrander Corrected Proposal - (-0.52%)

| <u>Line No.</u> | <u>2008</u> (a) | <u>2009 Average</u> (b) | <u>Totals</u> (a + b) (c) | |
|-----------------|---|----------------------------|---------------------------------|---------|
| 1 | Company's Original Proposed Gross Additions | 208,606 | 104,015 | 312,621 |
| 2 | Staff Proposed Disallowed 2009 Plant Additions | | (9,450) | (9,450) |
| 3 | Company's Adjusted Gross Additions (Line 1 + Line 2) | 208,606 | 94,565 | 303,171 |
| 4 | Staff's Four Year Average Percentage Under Budget | -0.52% | -0.52% | -0.52% |
| 5 | Adjustment for Average Percentage Under Budget (Line 3 x Line 4) | (1,085) | (492) | (1,576) |

Staff Ostrander Corrected Proposal - (1.60%)

| <u>Line No.</u> | <u>2008</u> (a) | <u>2009 Average</u> (b) | <u>Totals</u> (a + b) (c) | |
|-----------------|--|----------------------------|---------------------------------|---------|
| 1 | Company's Original Proposed Gross Additions | 208,606 | 104,015 | 312,621 |
| 2 | Staff Proposed Disallowed 2009 Plant Additions | | (9,450) | (9,450) |
| 3 | Company's Adjusted Gross Additions (Line 1 + Line 2) | 208,606 | 94,565 | 303,171 |
| 4 | Five Year Average Percentage versus Budget | 1.60% | 1.60% | 1.60% |
| 5 | Adjustment for Average Percentage Over Budget (Line 3 x Line 4) | 3,338 | 1,513 | 4,851 |

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company)
d/b/a Nicor Gas Company)
) Docket No. 08-0363
Proposed general increase in rates, and)
revisions to other terms and conditions)
of service)

AFFIDAVIT

I, Rocco J D'Alessandro, under oath, hereby swear to the following:

1. I am the Executive Vice President of Operations of Nicor Gas Company;
2. I prepared prefiled Surrebuttal Testimony on behalf of Northern Illinois Gas Company, d/b/a Nicor Gas Company, submitted as Nicor Gas Ex. 37.0, including Exhibits 37.1 through 37.8, and filed on November 5, 2008;
3. I have personal knowledge of all the facts in my Surrebuttal Testimony, and the answers set forth therein are true and correct to the best of my knowledge; and
4. If asked those same questions today, my answers would be the same.



Rocco J. D'Alessandro

Subscribed and sworn to before me
this 4th day of November, 2008.



Notary Public

