

DRAFT AIA® Document A105<sup>®</sup> - 2017

*Standard Short Form of Agreement Between Owner and Contractor*

AGREEMENT made as of the « » day of March in the year 2021  
(In words, indicate day, month and year.)

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

Board of Library Trustees  
Village of Orland Park  
14921 S. Ravinia Avenue  
Orland Park, Illinois 60462

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

Austin Tyler Construction, Inc.  
23343 S. Ridge Road  
Elwood, Illinois 60421

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

PARKING LOT ASPHALT REMOVAL  
AND RESURFACING PROJECT

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

N/A

The Owner and Contractor agree as follows.

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

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

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
3	CONTRACT SUM
4	PAYMENTS
5	INSURANCE
6	GENERAL PROVISIONS
7	OWNER
8	CONTRACTOR
9	ARCHITECT
10	CHANGES IN THE WORK
11	TIME
12	PAYMENTS AND COMPLETION
13	PROTECTION OF PERSONS AND PROPERTY
14	CORRECTION OF WORK
15	MISCELLANEOUS PROVISIONS
16	TERMINATION OF THE CONTRACT
17	OTHER TERMS AND CONDITIONS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and
- .3 other documents, if any, identified as follows:

SEE ATTACHED RIDER

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work. Ninety (90) Days

§ 2.2 Date of Commencement:

Unless otherwise set forth below, the date of commencement shall be the date of this Agreement.

~~(Insert the date of commencement if other than the date of this Agreement.)~~

*MMW 3/31/21*

« » *day we begin work onsite.*  
*need the library to confirm curb grades*  
*do not cause drainage issue per our field*  
*meetings. If any curb issues curb needs*  
*to be fixed prior to this contract work to begin.*

*TW 3/25/21*

§ 2.3 Substantial Completion:

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work:
(Check the appropriate box and complete the necessary information.)

[ « » ] Not later than 90 calendar days from the date of commencement.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

ONE HUNDRED NINETY FOUR THOUSAND FOUR HUNDRED NINETY NINE AND NO/100 DOLLARS (\$194,499.00)

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:
(Itemize the Contract Sum among the major portions of the Work.)

Table with 2 columns: Portion of the Work, Value. Row 1: N/A

§ 3.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:
(Identify the accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

N/A

§ 3.4 Allowances, if any, included in the Contract Sum are as follows:
(Identify each allowance.)

Table with 2 columns: Item, Price. Row 1: N/A

§ 3.5 Unit prices, if any, are as follows:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Table with 3 columns: Item, Units and Limitations, Price per Unit (\$0.00). Includes handwritten notes: 'There are four unit price items included in this contract per bid documents', 'TMM 3/31/21', '3/25/21'.

ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor's Applications for Payment certified by the Architect, the Owner shall pay the Contractor, in accordance with Article 12, as follows:
(Insert below timing for payments and provisions for withholding retainage, if any.)

Handwritten note: 'TW 3/25/21' and 'once a month, 10% retention held until project completion'. A line is drawn through the original text: 'Upon Substantial Completion and Owner finds the final work acceptable and the Contract fully performed.'

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.
(Insert rate of interest agreed upon, if any.)

Handwritten note: 'TMM 3/31/21'

See Section 17.7 of attached Rider

ARTICLE 5 INSURANCE (SEE ATTACHED RIDER)

§ 5.1 The Contractor shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 14.2, subject to the terms and conditions set forth in this Section 5.1:

§ 5.1.1 Commercial General Liability insurance for the Project, written on an occurrence form, with policy limits of not less than « » (\$ « ») each occurrence, « » (\$ « ») general aggregate, and « » (\$ « ») aggregate for products-completed operations hazard.

§ 5.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than « » (\$ « ») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 5.1.3 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 5.1.1 and 5.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 5.1.4 Workers' Compensation at statutory limits.

§ 5.1.5 Employers' Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ 5.1.6 The Contractor shall provide builder's risk insurance to cover the total value of the entire Project on a replacement cost basis.

**§ 5.1.7 Other Insurance Provided by the Contractor**

*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

**Coverage**

**Limits**

N/A

§ 5.2 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

§ 5.3 The Contractor shall obtain an endorsement to its Commercial General Liability insurance policy to provide coverage for the Contractor's obligations under Section 8.12.

§ 5.4 Prior to commencement of the Work, each party shall provide certificates of insurance showing their respective coverages.

§ 5.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents, and employees, each of the other; and (2) the Architect, Architect's consultants, and any of their agents and employees, for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance or other insurance applicable to the Project, except such rights as they have to the proceeds of such insurance.

**ARTICLE 6 GENERAL PROVISIONS**

**§ 6.1 The Contract**

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

**§ 6.2 The Work**

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

### § 6.3 Intent

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

### § 6.4 Ownership and Use of Architect's Drawings, Specifications and Other Documents

Documents prepared by the Architect are instruments of the Architect's service for use solely with respect to this Project. The Architect shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect.

### § 6.5 Electronic Notice

Written notice under this Agreement may be given by one party to the other by email as set forth below.

*(Insert requirements for delivering written notice by email such as name, title, and email address of the recipient, and whether and how the system will be required to generate a read receipt for the transmission.)*

« »

## ARTICLE 7 OWNER

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

§ 7.1.1 If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

§ 7.1.2 Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

§ 7.1.3 Prior to commencement of the Work, at the written request of the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence.

### § 7.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

### § 7.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Architect may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction, provided the actions of the Owner and amounts charged to the Contractor were approved by the Architect.

### § 7.4 Owner's Right to Perform Construction and to Award Separate Contracts

§ 7.4.1 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.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

## ARTICLE 8 CONTRACTOR

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

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

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements

and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Architect.

#### **§ 8.2 Contractor's Construction Schedule**

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work.

#### **§ 8.3 Supervision and Construction Procedures**

**§ 8.3.1** The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

**§ 8.3.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, through the Architect, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect have made a timely and reasonable objection.

#### **§ 8.4 Labor and Materials**

**§ 8.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

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

#### **§ 8.5 Warranty**

The Contractor warrants to the Owner and Architect that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 12.5.

Also, see Section 8.5 of attached Rider.

#### **§ 8.6 Taxes**

The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

#### **§ 8.7 Permits, Fees and Notices**

**§ 8.7.1** The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

**§ 8.7.2** The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

#### **§ 8.8 Submittals**

The Contractor shall promptly review, approve in writing, and submit to the Architect shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

#### **§ 8.9 Use of Site**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

#### **§ 8.10 Cutting and Patching**

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

#### **§ 8.11 Cleaning Up**

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials.

#### **§ 8.12 Indemnification**

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

### **ARTICLE 9 ARCHITECT**

**§ 9.1** The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 9.2** The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

**§ 9.3** The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

**§ 9.4** Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor.

**§ 9.5** The Architect has authority to reject Work that does not conform to the Contract Documents.

**§ 9.6** The Architect will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 9.7** On written request from either the Owner or Contractor, the Architect will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

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

**§ 9.9** The Architect's duties, responsibilities, and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### **ARTICLE 10 CHANGES IN THE WORK**

**§ 10.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit.

§ 10.2 The Architect may authorize or order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such authorization or order shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall proceed with such minor changes promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

#### **ARTICLE 11 TIME**

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

§ 11.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

#### **ARTICLE 12 PAYMENTS AND COMPLETION**

##### **§ 12.1 Contract Sum**

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

##### **§ 12.2 Applications for Payment**

§ 12.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the values stated in this Agreement. The Application shall be supported by data substantiating the Contractor's right to payment as the Owner or Architect may reasonably require, such as evidence of payments made to, and waivers of liens from, subcontractors and suppliers. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 12.2.2 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to the Owner's interests.

##### **§ 12.3 Certificates for Payment**

The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole. If certification or notification is not made within such seven day period, the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time and the Contract Sum shall be equitably adjusted due to the delay.

##### **§ 12.4 Progress Payments**

§ 12.4.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

§ 12.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.4.3 Neither the Owner nor the Architect shall have responsibility for payments to a subcontractor or supplier.



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

#### § 12.5 Substantial Completion

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

§ 12.5.2 When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the Architect and the Architect will make an inspection to determine whether the Work is substantially complete. When the Architect determines that the Work is substantially complete, the Architect shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Owner and Contractor, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

#### § 12.6 Final Completion and Final Payment

§ 12.6.1 Upon receipt of a final Application for Payment, the Architect will inspect the Work. When the Architect finds the Work acceptable and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment.

§ 12.6.2 Final payment shall not become due until the Contractor submits to the Architect releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

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

### ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

### ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the Architect as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

### ARTICLE 15 MISCELLANEOUS PROVISIONS

#### § 15.1 Assignment of Contract

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

#### § 15.2 Tests and Inspections

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

owner TU 3/25/21 (initials) 3/31/21

owner TW 3/25/21  
MM 3/31/21

§ 15.2.2 If the Architect requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 15.3 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

ARTICLE 16 TERMINATION OF THE CONTRACT

§ 16.1 Termination by the Contractor

If the Work is stopped under Section 12.3 for a period of 14 days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

§ 16.2 Termination by the Owner for Cause

§ 16.2.1 The Owner may terminate the Contract if the Contractor

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

§ 16.2.2 When any of the above reasons exist, the Owner, after consultation with the Architect, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 16.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 17 OTHER TERMS AND CONDITIONS

(Insert any other terms or conditions below.)

See attached Rider.

This Agreement entered into as of the day and year first written above.  
(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)

March 25, 2021

Gary S. Schumal

OWNER (Signature)

BOARD OF LIBRARY TRUSTEES  
VILLAGE OF ORLAND PARK

(Printed name and title)

MARY K. WEIMAR  
LIBRARY DIRECTOR

CONTRACTOR (Signature)

AUSTIN TYLER CONSTRUCTION, INC.

[REDACTED] PRESIDENT

(Printed name and title)

LICENSE NO.:  
JURISDICTION:

## **RIDER TO THE STANDARD SHORT FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR (AIA DOCUMENT A105 – 2017)**

The following provisions, notwithstanding any provisions to the contrary, amend, delete, replace and add to the Standard Short Form of Agreement Between Owner and Contractor, AIA Document A105 – 2017 Edition (as modified by Owner). Where the terms of this Rider are in conflict with the terms of the Standard Form of Agreement, the terms of this Rider shall prevail. Where the provisions of the Standard Form of Agreement are modified or deleted by this Rider, the unaltered portions of those provisions shall remain in effect.

### **ARTICLE 1. THE CONTRACT DOCUMENTS**

The Contract Documents consist of:

- .1 Standard Short Form of Agreement between Owner and Contractor, as modified by Owner
- .2 Advertisement for Bids
- .3 Instructions to Bidders
- .4 Special Conditions
- .5 Certifications
- .6 Specifications
- .7 Addendum
- .8 Bid and Pricing
- .9 Bid, Performance and Payment Bonds
- .10 Insurance Certificates
- .11 This Rider

### **ARTICLE 4. PAYMENT**

§ 4.1 Replace the words “certified by the Architect” with “approved by the Owner”.

### **ARTICLE 5. INSURANCE**

The Contractor shall provide and maintain insurance for the Project as specified in the Special Conditions.

### **ARTICLE 7. OWNER**

§ 7.2 **Owner’s Right to Stop the Work.** Add the following after the first sentence of this Section 7.2: “The exercise by Owner of its right to stop Work in the event of Contractor’s default shall not be construed as placing the Owner in charge of the Work or making the Owner responsible for site safety.”

### **ARTICLE 8. CONTRACTOR**

§ 8.1.2 Replace the word “Architect” with “Owner”.

§ 8.2 Contractor's Construction Schedule. Delete the words "and Architect".

§ 8.3 Supervision and Construction Procedures

§ 8.3.2 In the first sentence, delete the words "through the Architect". In the second sentence, delete the words "or Architect" and change the word "have" to "has".

§ 8.4. Labor and Materials

Insert the following subsections:

§ 8.4.3 The Contractor and all trades shall conduct all their operations on this Project in such a manner that no labor or jurisdictional disputes arise.

§ 8.4.4 Contractor shall comply with all applicable laws and regulations relating to employment, including, but not limited to, the Fair Labor Standards Act and the Occupational Safety and Health Act of 1970. Contractor shall hold the Owner harmless from and reimburse it for any and all costs, damages and expenses (including attorney's fees) suffered by it directly or indirectly through the failure of Contractor to comply with any such laws, regulations or orders.

§ 8.4.5 Labor: Contractors and subcontractors employed upon work shall be required to conform to Labor Laws of the state in which the Project is located and various acts amendatory and supplementary thereto and to other law, ordinance and all requirements applicable thereto.

§ 8.4.5.1 Foremen, mechanics and employees of Contractor whose work is unsatisfactory to Owner, or Architect or are considered to be careless, incompetent, unskilled or otherwise objectionable shall be dismissed from work upon notice from the Owner.

§ 8.4.5.2 It shall be the duty of every contractor engaged in this work to enforce among all workmen directly or indirectly employed by him, all rules which Owner may lay down for conduct of workmen on premises.

8.5. WARRANTY

§ 8.5 Warranty. In the first line in Section 8.5, delete "and Architect". In the third line in Section 8.5 delete the phrase "not inherent in the quality required or permitted," and insert the following in the third line after the word "defects": "in material and workmanship for ~~three (3)~~ <sup>one (1)</sup> years from the date of ~~issuance of the final payment by Owner,~~ and deficiencies shall be corrected by the Contractor immediately upon notification from the Owner;"

MM 3/21/21  
ONE (1)  
TW 3/25/21

Insert the following after the last word in the section:

Final completion  
TW 3/25/21

"Contractor warrants the materials and workmanship for twelve (12) months following Substantial Completion and Owner finds the final work acceptable and the Contract fully performed. Substantial Completion also means that the Project site will be free of ~~puddling or~~ ponding of standing water. Such warranty does not preclude the Owner's right to bring action for breach of this Contract. Work not conforming to these requirements, including substitutions not

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properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.”

**§ 8.7 Permits, Fees and Notices**

§ 8.7.2 Change the word “Architect” to “Owner”.

§ 8.8 **Submittals.** Change the word “Architect” to “Owner”.

**ARTICLE 9. ARCHITECT**

Substitute the word “Owner” for “Architect” in all sections of Article 9.

§ 9.1 Delete the second sentence.

§ 9.4 Replace the word “certify” with “determine”.

§ 9.7 Delete the words “either the Owner or” and insert the word “the” after the word “from”.

§ 9.8 Delete Section 9.8 in its entirety.

§ 9.9 Delete Section 9.9 in its entirety.

**ARTICLE 10. CHANGES IN THE WORK**

§ 10.1. Delete Section 10.1 in its entirety and insert the following:

“After execution of the Contract, changes in the Work may be accomplished by Change Order or by order of a minor change in the Work. No Change Orders shall be issued for the Work under this Contract which authorize or necessitate an increase or decrease in the cost of the Contract by a total of \$10,000 or more or in the time of completion by a total of thirty (30) days or more unless a written determination is made by the Owner or a duly authorized designee of the Owner other than the Architect:

1. The circumstances said to necessitate the change in performance were not reasonably foreseeable at the time this Contract was signed; or
2. The change is germane to the original Contract as signed; or
3. The Change Order is in the best interest of the Owner and is authorized by law; and
4. If applicable, that any change resulting in an increase in the Contract Sum of 50% or more will require the Owner to submit the change to competitive bidding in the same manner as the original Contract was bid.”

§ 10.2. Delete Section 10.2 in its entirety.

~~§ 10.3. Delete Section 10.3 in its entirety.~~

Delete  
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**ARTICLE 11. TIME**

Insert the following subsections:

“§ 11.1.2 No extension of time beyond completion date stated will be allowed without the Owner’s written consent. In order to qualify for such an extension, the Contractor must notify the Owner in writing five working days immediately following the occurrence of such circumstances to justify an extension, or the Contractor will have been deemed to have waived his right to an extension of time.

§ 11.1.3 Time of completion shall be strictly adhered to. In case of failure on the part of the Contractor to execute his work satisfactorily, Owner reserves the right to employ other means to complete the work as described in the Contract Documents.”

Delete and replace § 11.3 with the following:

“§ 11.3 If, for any reason other than the negligence of the Contractor, the required work cannot be performed during normal working hours on normal working days as defined by local ordinance, special arrangements can be made with the Owner to perform the work on evenings and on Saturday or Sunday. No extra compensation will be allowed because of premium time provided for Contractor’s convenience or to comply with schedule.”

**ARTICLE 12. PAYMENTS AND COMPLETION**

**§ 12.6 Final Completion and Final Payment.**

§ 12.6.2 Add at the end of the sentence “and the Owner finds the final work acceptable and the Contract fully performed.”

**ARTICLE 15. MISCELLANEOUS PROVISIONS**

§ 15.2.2 Replace the word “Architect” with the word “Owner” in the first sentence.

**ARTICLE 16. TERMINATION OF THE CONTRACT**

§ 16.1 Termination by the Contractor. Delete Section 16.1 in its entirety.

**§ 16.2 Termination by the Owner for Cause:**

§ 16.2.1. Delete the word “repeatedly” and in Section 16.2.1.1 add the word “persistently” in Section 16.2.1.3.

§ 16.2.2 Delete the words “after consultation with Architect” in the first sentence.

§ 16.2.3. In Section 16.2.3, delete the words “until the Work is finished”.

§ 16.2.4. Delete Section 16.2.4 in its entirety.

## ARTICLE 17. OTHER TERMS AND CONDITIONS

Delete in its entirety § 17.1 and replace it with the following:

### “§ 17.1 Prevailing Wages

It is hereby stipulated that the Contractor shall pay not less than the prevailing hourly rate of wages, and the generally prevailing rate of hourly wages for legal holiday and overtime work, as determined by the Illinois Department of Labor and as set forth in the schedule of prevailing wages provided by the Owner for this Contract to all laborers, workers, and mechanics performing Work under this Contract. All bonds provided by the Contractor under the terms of this Contract shall include such provisions as will guarantee the faithful performance of the Contractor's obligations under this clause and under the Prevailing Wage Act, 820 ILCS 130/1, et seq. Should the Department of Labor revise any prevailing rate of hourly wages, such revised rate shall be applicable to this Contract; however, in no event shall the increase in any prevailing rate of hourly wages be a basis for a change order or other claim for an increase in the Contract Sum.

The Contractor shall comply with the requirements of Section 5 of the Prevailing Wage Act (820 ILCS 130/5). The Contractor shall require each Trade Contractor, and all subcontractors and sub-subcontractors participating on the Project to make and keep those records required under Section 5 of the Prevailing Wage Act (820 ILCS 130/5). In conformance with the Act, each Contractor and/or subcontractor, or other entity performing Work on the Project, shall maintain records of all laborers, mechanics and other workers employed by them on this Project, including the following information on each worker: (1) name; (2) address; (3) telephone number when available; (4) social security number; (5) classification or classifications; (6) hourly wages paid in each pay period; (7) number of hours worked each day; and (8) starting and ending times of each day. These records shall be kept by the participating Contractor and subcontractor for a period of not less than three (3) years. Each participating Contractor and subcontractor shall submit a monthly certified payroll to the Owner consisting of the above-referenced information as well as a statement signed by the participating Contractor or subcontractor that certifies: (a) the records are true and accurate; (b) the hourly rates paid to each worker is not less than the general prevailing rate of hourly wages required under the Prevailing Wage Act; and (c) the Contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor. Contractor shall include the above-referenced certified statement from each applicable Trade Contractor, subcontractor and/or sub-subcontractor referenced in each Application for Payment.”

Insert the following additional terms and conditions in Article 17 as follows:

### “§ 17.4 Compliance with Governmental Regulations

The Contractor shall comply with all applicable governmental ordinances, statutes, rules and regulations as they apply to the duties of the Contractor pursuant to the terms of this Contract.



## § 17.5 Miscellaneous Provisions

(a) Contractor shall abide by all applicable local state and federal ordinances, statutes, rules and regulations including, but to limited to, the Illinois Human Rights Act and the Prevailing Wage Act.

### (b) Human Rights Act

The Contractor hereby agrees that this Contract shall be performed in compliance with all requirements of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., and that all contractors and subcontractors performing Work on the Project shall not engage in any prohibited form of discrimination in employment as defined in that Act. The Contractor shall maintain, and require that its subcontractors maintain, policies of equal employment opportunity which shall prohibit discrimination against any employee or applicant for employment on the basis of race, religion, color, sex, national origin, ancestry, citizenship status, age, marital status, physical or mental disability unrelated to the individual's ability to perform the essential functions of the job, association with a person with a disability, or unfavorable discharge from military service. The Contractor and all subcontractors shall comply with all requirements of the Act and of the Rules of the Illinois Department of Human Rights with regard to posting information on employees' rights under the Act. The Contractor and all subcontractors shall place appropriate statements identifying their companies as equal opportunity employers in all advertisements for workers to be employed in work to be performed under this Contract.

### (c) Sexual Harassment Policy

Pursuant to Section 2-105 (A)(4) of the Illinois Human Rights Act, the Contractor and each subcontractor shall adopt and maintain written sexual harassment policies that shall include, at a minimum, the following information:

- (1) the illegality of sexual harassment;
- (2) the definition of sexual harassment under state law;
- (3) a description of sexual harassment, utilizing examples;
- (4) the Contractor/subcontractor's internal complaint process, including penalties;
- (5) the legal recourse, investigative and complaint process available through the Department and Commission (of Human Rights);
- (6) directions on how to contact the Department and the Commission; and
- (7) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act.

A copy of these policies shall be provided to the Owner or the Architect on request.

### (d) Certification to Enter Into Public Contracts

Prior to entering into any contract in regard to this Project, the Contractor and all subcontractors must certify that they are not barred from contracting with any unit of

state or local government as a result of a violation of either Section 33E-3 or 33E-4 of the Illinois Criminal Code or any similar offense of any State of the United States which contains the same elements as the Illinois offenses of bid-rigging or bid rotating.

(e) No Waiver of Payment

Notwithstanding any language in any contract document to the contrary or inconsistent with this provision, Owner shall not be deemed to waive any claim or right to assert a claim by making any progress payment.

(f) Waiver of Lien

Upon satisfaction of the terms and conditions of the Contract and final payment, the Contractor agrees to provide the Owner with a final release and waiver of all liens covering all work performed under the Contract relative to the project including all Work performed by all subcontractors. Said final waiver of lien shall identify and state that all Contractors and subcontractors have been paid in full and there are no contract balances outstanding and owed to any such Contractors or subcontractors.

(g) Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 et seq.

Contractor certifies that it has in place a written program which meets or exceeds the program requirements of the Substance Abuse Prevention on Public Works Projects Act, and will provide a copy thereof to the Owner.


**§ 17.6 No Damages for Delay.** The Contractor agrees in the event of delay for any reason caused by any party or person, Contractor will be fully compensated for the delay by an extension of time to complete the Contract and will not seek additional compensation.

**§ 17.7 Prompt Payment Act.** All payments required to be made by the Owner under this Contract shall be made in conformance with the provisions of the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq.”

This Rider shall be effective on the day and date above when executed by duly authorized agents of the parties.


FOR: OWNER

BOARD OF LIBRARY TRUSTEES  
OF THE VILLAGE OF ORLAND PARK

By:   
Library Director

FOR: CONTRACTOR

AUSTIN TYLER CONSTRUCTION, INC.

By:   
Its: VPRESIDENT

Gary S. Schumal

- 1) There should be a specific start date inserted in 2.2. It can be revised/amended as agreed by the parties after the curb issue is resolved; *until we address curb I don't no what date should be write in the contract.*
- 2) As to the insertion in 3.5 regarding unit prices, I don't understand the issue; *Just noting there are unit prices separate from base b.o.d*
- 3) As to the 3% written in, this is not acceptable. Interest on past due payments are governed by the Local Government Prompt Payment Act; *OK deleted*
- 4) As to the revisions to 15.2.1 and 15.2.2, was there any agreement regarding payment responsibility for additional testing? The bid documents specifically provided that the contractor agrees to this form of contract-no contractor revisions are acceptable; *There was nothing in contract about testing. I do not need testers, only if you require is it*
- 5) As to the Rider (para. 8.5), is a 1 year warranty acceptable? *-yes*
- 6) Deletion of para. 10.3 of the Rider is OK. *OK*

*MM 3/31/21*

*MM 3/31/21 needed.*