

DRAFT

AIA® Document A105™ – 2017

Standard Short Form of Agreement Between Owner and Contractor

AGREEMENT made as of the » day of « » in the year 2018 »
(In words, indicate day, month and year.)

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

Northbrook Public Library
1201 Cedar Lane
Northbrook, Illinois 60062

«-»«-»«-»
«-»
«-»

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

«-»«-»«-»
«-»
«-»

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

Library Cabling Project

Replacement of CAT 5 network cables with CAT 6 network cables and adding new drops where needed.

See “Scope of Services” in the Notice of Cabling Bid (Exhibit A).

«-»

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

The Owner and Contractor agree as follows.

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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.

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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 ~~any the~~ drawings and specifications ~~prepared by the Architect, dated <<>~~;
- .3 addenda prepared by the ~~Architect~~ Owner as follows:

Number	Date	Pages
↔		

- 4 written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and
- 5 other documents, if any, identified as follows:

Project Manual, Bid/Contract Documents, attached hereto, including the Notice of Cabling Bid (Exhibit A) and all related attachments, the Successful Bidder's written bid, bonds, the Drawings, the Specifications any Supplemental Plans, Supplemental Specifications, Bulletins, all Addenda issued prior to and all modifications issued after execution of the Contract and a Purchase Order issued by the Library's Finance Department



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.

§ 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.)

↔ January, 2019

§ 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 ↔ (↔) calendar days from the date of commencement.~~

[↔X] By the following date: ↔ March 15, 2019. Final Completion should be obtained by May 1, 2019.

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:



§ 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.)

Portion of the Work	Value
« »	

§ 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.)

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

Item	Price
None	

§ 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.)

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

ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor’s Applications for Payment certified by the ~~Architect~~Owner, 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.)

~~Per the project manual section on payment procedures. And the Project Manual/Contract Documents, and the Notice of Cabling Bid~~

§ 4.2 ~~No interest (0% interest) shall be payable by the Owner under the Agreement. All payments are to be handled in accordance with the Illinois Local Government Prompt Payment Act and subject to the receipt by Owner of all required documentation, including but not limited to lien waivers, certified payroll or an explanation of exemption, record drawings, etc~~

~~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.)~~

~~« » % « »~~

~~Payment shall be made in accordance with the Local Government Prompt Payment Act, 50 IL CS 505/1 et seq.~~

ARTICLE 5 INSURANCE AND BONDS

§ 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

«»

Contractor's Liability Insurance

Upon notice of acceptance of proposal, the Contractor shall, within fifteen (15) calendar days of said notice, furnish to the Procurement Officer a certificate of insurance evidencing coverage by the types of insurance in the amounts specified below. Such coverage shall be placed with a responsible company acceptable to the Owner, licensed to do business in the State of Illinois, and with a minimum insurance rating of A:VII as found in the current edition of A. M. Best's Key Rating Guide. Each policy shall bear an endorsement precluding the cancellation or reduction of said policies without providing the Owner at least thirty (30) days prior notice thereof in writing. All required insurance shall be maintained by the contractor in full force and effect during the life of the contract, and until such time as all work has been approved and accepted by the Owner.

1) Workman's Compensation: STATUTORY coverage for all persons whom the contractor may employ directly or through subcontractors in carrying out the work under this contract. Such insurance shall hold the Owner free and harmless of all personal injuries of all persons whom the contractor may employ directly or through subcontractors.

2) Employer's Liability: ~~\$2,000,000~~ \$1,000,000 minimum liability.

3) Comprehensive General Liability; including Bodily Injury and Property Damage. The contractor shall take out, pay for and maintain until the completion and acceptance of the work under this contract insurance as shall protect him and his subcontractors from bodily injury and property damage claims which may arise because of the nature of the work or from operations under this contract. **The Northbrook Public Library shall be named as an additional insured.**

Coverage shall be provided in the following minimum amounts: ~~\$2,000,000~~ \$1,000,000 Each Occurrence - Combined Single Limit ~~\$2,000,000~~-\$1,000,000 Aggregate - Completed Operations ~~\$2,000,000~~-\$1,000,000 Each Occurrence - Blanket Contractual Liability

4) Comprehensive Automobile Liability, Owned, Non-owned and Hired: The contractor shall take out, pay for and maintain until the completion and acceptance of the work under this contract insurance as shall protect them from claims for bodily injury and property damage which may arise from the use of motor vehicles engaged in various operations under this contract. Coverage shall be provided in the minimum amount of ~~\$2,000,000~~-\$1,000,000 for Combined Single Limit.

5) Umbrella Liability; as required. **The Northbrook Public Library shall be named as an additional insured.**

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Library, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

§ 5.2 Owner's Liability Insurance

§ 5.2.1 Owner shall maintain its usual insurance for liability for claims which may arise from operations under the Contract and that will protect the Owner from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or to destruction of tangible property (other than the work itself) including the loss of use resulting therefrom.

§ 5.3 Performance And Payment Bond

§ 5.3.1 Contractor, before commencing the Work, shall furnish a Performance Bond and a Labor and Material Bond. The Performance Bond shall be in an amount equal to 100% of the full amount of the Contract Sum as security for the faithful performance of the obligation of the Contract Documents, and the Labor and Material Payment Bond shall be in an amount equal to 100% of the full amount of the Contract Sum as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such bonds shall be on forms provided by the Owner, shall be issued by a surety satisfactory to the Owner, and shall name the Owner as a primary co-obligee. The cost of the bonds is to be included in the Bid Proposal. The Performance Bond and Labor and Material Payment Bond will become a part of the Contract. Each Bidder shall list the name of the surety company that will be furnishing the Bonds on its Bid Proposal. The failure of a Bidder to list the name of its surety company on its Bid Proposal shall be a non-responsive bid. The failure of the successful Bidder to enter into a Contract and supply the required Bonds within five (5) days after the Notice of Award or within such extended period as the Owner may grant if the forms do not meet its approval shall constitute a default, and the Owner may either award the Contract to the next responsible, responsive Bidder or re-advertise for bids. A charge against the defaulting Bidder may be made for the difference between the amount of the bid and the amount for which a contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid guarantee.

§ 5.3.1.1 The Contractor shall deliver the required bonds to the Owner not later than five days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the

Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

§ 5.3.1.2 The Contractor shall require the attorney-in-fact who executed the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

§ 5.3.2 Whenever the Contractor shall be and is declared by Owner to be in default under the Contract, the Surety and the Contractor are each responsible to make full payment to the Owner or any and all extra Work incurred as a result of the Contractor's default, and to pay to Owner all attorney's fees and court costs incurred by Owner as a result of the Contractor's default, and in protecting Owner's rights under the Agreement to remedy Contractor's default.

§ 5.3.3 The Contractor shall (i) furnish all Surety Company's bonds through Surety Company's local agents approved by and/or as directed by Owner; (ii) fully covered and guarantee with said bond the faithful performance and completion of the entire Contract, including without limitation, the faithful performance of prevailing wage requirements; and (iii) guarantee with said bond payment in all cases by the Contractor or by the Surety Company for all labor performed, material and supplies furnished with the entire Work in the Contract. Said Bond shall remain in full force and effect during the entire period of all general guarantees given by the Contractor with the Contract as called for in the Specifications and Contract, except in cases where other bonds are specifically called for in the specifications and Contract in connection with special guarantees.

~~§ 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 delivered by Owner are instruments of service for use by Contractor solely with respect to this project. They are not to be used by the Contractor or any Subcontractor (of any level) or material or equipment supplier for other projects or for additions to this project outside the scope of the Work without the specific written consent of the Owner.~~

~~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. Contractor freely waives all of its rights under the Illinois Public Construction Contract Act of 1999.~~

§ 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~~ Owner 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~~ Owner.

§ 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.

§ 7.5 OWNER'S REMEDIES NOT EXCLUSIVE. The rights and remedies of Owner stated in this Article shall be in addition to and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

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 by the Contractor, that the Contract Documents are full and complete, are sufficient to enable the Contractor to determine the cost of the Work and that the Contract Documents are sufficient to enable it to construct the Work outlined therein, in accordance with applicable laws and regulations, and otherwise to fulfill all its obligations hereunder, including, but not limited to, Contractor's obligations to construct the Work for an amount not in excess of the Contract Sum on or before the date(s) of Completion established in the Agreement. The Contractor further acknowledges and declares that it has visited and examined the Project site, examined all physical and other conditions affecting the Work and is fully familiar with all of the conditions thereon and thereunder affecting the same. In connection therewith, Contractor specifically represents and warrants to Owner that prior to the submission of its bid it has: (1) thoroughly examined the location of the work to be performed, is familiar with local conditions, and has read and thoroughly understands the Contract Documents as they relate to the physical conditions prevalent or likely to be encountered in the performance of the work at such location; (2) examined the nature, location and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) examined the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

~~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~~Owner.

§ 8.1.2.1 The exactness of grades, elevations, dimensions, or locations given in any drawings or the work installed by other contractors is not guaranteed by the Owner.

§ 8.1.2.2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by it without additional cost to the Owner.

§ 8.1.2.3 Prior to any excavation, the Contractor shall determine the locations of all existing water, gas, sewer, electric, telephone, telegraph, television, irrigation, petroleum pipelines, and other underground utilities and structures. Where

the locations of existing underground and surface utilities and structures are indicated, these locations are generally approximate, and all items that may be encountered during the work are not necessarily indicated. The Contractor shall determine the exact locations of all items indicated, and the existence and locations of all items not indicated.

§ 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.

§ 8.3.3 The Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work, including without limitation, deliveries, storage, installations, and construction utilities with that of all others on the Project. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective method of overall installation.

§ 8.3.4 After commencing the work, the Contractor shall use every precaution to avoid interferences with existing underground and surface utilities and structures, and protect them from damage. The Contractor shall repair or pay for all damage caused by his operations to all existing utility lines, public property, and private property, whether it is below ground or above ground, and he shall settle in total cost of all damage suits which may arise as a result of his operations at no additional costs to the Owner. To avoid unnecessary interferences or delays, the Contractor shall coordinate all utility removals, replacements and construction with the appropriate utility company. The cost of temporarily relocating utilities for convenience of the Contractor, shall be paid by Contractor.

§ 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.

§ 8.4.3 All manufactured articles, material and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as directed by the manufacturer, unless herein specified to the contrary.

§ 8.4.4 After the Contract has been executed, the Owner and will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the General Requirements.

§ 8.4.5 Contractor and each of its Subcontractors shall pay prevailing wages as established by the Illinois Department of Labor for each craft or type of work needed to execute the contract in accordance with 820 ILCS 130/.01 et seq. The Contractor shall prominently post the current schedule of prevailing wages at the Contract site and shall notify immediately in writing all of its Subcontractors, of all changes in the schedule of prevailing wages. Any increases in costs to the Contractor due to changes in the prevailing rate of wage during the terms of any contract shall be at the expense of the Contractor and not at the expense of the Owner. The change order shall be computed using the prevailing wage rates applicable at the time the change order work is scheduled to be performed. The Contractor shall be solely responsible to maintain accurate records as required by the prevailing wage statute and shall be solely liable for paying the difference between prevailing wages and any wages actually received by laborers, workmen and/or mechanics engaged in the Work and in every way defend and indemnify the Owner against any claims arising under or related to the payment of wages in accordance with the Prevailing Wage Act. The Illinois Department of Labor Publishes the prevailing wage rates on its website at <https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/2017-Rates.aspx>. The Department revises the prevailing wage rates and the Contractor/subcontractor has an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website.

§ 8.5 Warranty

1. 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.
2. The completed installation shall receive a numbered Registration Certificate for the manufacturer. Provide any and all registrations from the manufacturers for the installed cabling system.
3. All additional warranties that may be placed on the installation by the cabling contractor due to affiliation with the material vendor are to be noted.
4. Materials and workmanship hereinafter specified and furnished shall be fully guaranteed by the contractor for a minimum of one (1) year ("the Term") from transfer of title against any defects. The Contractor, at no additional cost to the customer, shall correct defects which may occur as the result of faulty materials or workmanship within the Term after installation and acceptance by the customer. The Contractor shall promptly, at no cost to the customer, correct or re-perform any nonconforming or defective work within the Term after completion of the project of which the work is a part. The Contractor's warranties shall commence with acceptance of or payment for the work in full.
5. The Contractor shall be a registered business partner of the cabling system being proposed. Additionally, the contractor shall provide, through the cabling manufacturer(s), an extended product and application assurance warranty for a minimum of twenty-five (25) years that covers the passive components of the system (i.e., cable and connectivity components that make up the passive data and telecommunications signal transmission infrastructure).

§ 8.6 Taxes

The Owner is exempt from the Illinois Use Tax Act and the Retailer's Occupation Tax.

~~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/Owner 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/Owner 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. Contractor agrees to reimburse Owner for any additional costs incurred by Owner arising out of any delay or acts of the Contractor in completing the work (including additional observations and testing expenses).

§ 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

In consideration of the award of the Contract and to the fullest extent permitted by law, the Contractor shall waive any right of contribution against the Owner and agrees to defend, indemnify, and hold harmless the Northbrook Public Library, and each of their respective library trustees, directors, officers, officials, employees, volunteers, and agents (collectively all of the foregoing entities and persons are referred to as the "Indemnitees") from and against from all claims, actions, damages, losses, costs and expenses incurred to third parties including but not limited to legal fees (including attorney's and paralegals' fees and court costs), arising out of or resulting from the Contractor's operations or its performance of the Work of the Contract which claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of property, other than the work itself, including the loss of use therefrom or is attributable to misuse or improper use of patent, trademark or copyright protected material or otherwise protected intellectual property (ii) and, only to the extent such liabilities, damages, losses, and expenses are caused by any wrongful or negligent act or omission of the Contractor, or any subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Nothing herein shall be construed to

require the Contractor to indemnify any indemnitee for that indemnitee's own negligence. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which Indemnitees would otherwise have. The Contractor shall similarly defend, indemnify and hold harmless Indemnitees against and from any and all claims, actions, damages, losses, costs and expenses including but not limited to legal fees, incurred by reason of Contractors' breach of any of its obligations under, or Contractors' failure to perform the Work in accordance with any provision of the Contract. Contractor shall similarly protect, indemnify and hold and save harmless the Owner, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Contract. The indemnification obligations under this paragraph shall not be limited to in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation or Disability Acts or Employee Benefits Acts.

~~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 INTENTIONALLY DELETED.

~~§ 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~~ Owner 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~~Owner 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. For every party listed the Contractor shall provide a full or partial waiver of lien, as appropriate, before a payment will be made to the Contractor. The Contractor's partial or final waiver of lien must be included. Payment shall not be made by the Library without such mechanics' lien waivers and contractors' sworn statements unless they are conditioned upon receipt of such waivers and statements. In addition, the Library shall not make payment until the monthly certified payroll has been submitted in accordance with Section 1.26. Payment terms shall be in accordance with the provisions of the Local Government Prompt Payment act, 50 ILCS 505/1 et seq., after receipt by the Library of the Contractor's invoice. 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~~Owner 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~~Owner determines is properly due, and notify the Contractor and Owner in writing of the ~~Architect~~Owner's ~~'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~~Owner'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~~Owner 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~~ The Owner ~~nor the Architect shall~~ shall not 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.

§ 12.4.5 Until substantial completion, the Owner shall pay 90 percent of the amount due the Contractor on account of progress payments.

§ 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~~ Owner and the ~~Architect~~ Owner will make an inspection to determine whether the Work is substantially complete. When the ~~Architect~~ Owner determines that the Work is substantially complete, the ~~Architect~~ Owner 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~~ Owner will inspect the Work. When the ~~Architect~~ Owner finds the Work acceptable and the Contract fully performed, the ~~Architect~~ Owner will promptly issue a final Certificate for Payment.

§ 12.6.2 Final payment shall not become due until the Contractor submits to the ~~Architect~~ Owner 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. Upon satisfaction of the terms and conditions of the Contract, the Contractor agrees to provide the Owner with a final release and waiver of all liens covering all of the Work performed under the Contract relative to the project prior to issuance of final payment. Said final waiver of lien shall identify and state that all Subcontractors have been paid in full and there are no contract balances outstanding and owed to any Subcontractor.

§ 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 Owner 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.

§ 15.2.2 If the Architect Owner 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.)

§ 17.1 The Contractor warrants it is familiar with and shall comply with Federal, State and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Contract including without limitation Workers' Compensation Laws, minimum salary and wage statutes and regulations, laws with respect to permits and licenses and fees in connection therewith, laws regarding maximum working hours. No plea of misunderstanding or ignorance thereof will be considered.

§ 17.2 Whenever required, the Contractor or Subcontractor shall furnish the Owner with satisfactory proof of compliance with said Federal, State and local laws, statutes, ordinances, rules, regulations, orders, and decrees.

§ 17.3 Dispute resolution – Litigation in a court of competent jurisdiction. There are no preconditions to filing suit.

§ 17.4 Contractor shall carefully examine the Occupational Safety and health Act as issued by the Federal Register (OSHA), and the specific regulations governing procedures, techniques, safety precautions, equipment design, and the configuration of the same as required under this Act and shall comply with all terms of the Act and to perform and complete in a workmanlike manner all work required in full compliance with said Act.

§ 17.5 Contractor shall comply with all terms of the Illinois Preference Act and all terms of the Equal Employment Opportunity Clause of the Illinois Fair Employment Practices Commission.

§ 17.6 At all times Contractor shall remain in compliance with the Illinois Public Works Employment Discrimination Act (775 ILCS 10/1, et seq.) and the Illinois Human Rights Act (775 ILCS 5/2-101, et seq.) and in addition shall at all times comply with Section 2-105 of the Illinois Human Rights Act requiring a written sexual harassment policy as defined therein.

§ 17.7 Contractor agrees to maintain all records and documents for projects of the Owner in compliance with the Freedom of Information Act, 5 ILCS 140/1 et seq. In addition, Contractor shall produce, without cost to the Owner, records which are responsive to a request received by the Owner under the Freedom of Information Act so that the Owner may provide records to those requesting them within the time frames required. If additional time is necessary to compile records in response to a request, then Contractor shall so notify the Owner and if possible, the Owner shall request an extension so as to comply with the Act. In the event that the Owner is found to have not complied with the Freedom of Information Act based upon Contractor's failure to produce documents or otherwise appropriately respond to a request under the Act, then Contractor shall indemnify and hold the Owner harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorneys' fees and penalties.

§ 17.8 The Contractor shall comply with and cause all subcontractors to comply with the requirements and provisions of the Illinois Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 et. seq.) (the "Act").

§ 17.9 PREVAILING WAGES

To the extent that the Prevailing Wage Act applies, the Contractor shall comply therewith and pay, and require every Subcontractor to pay, the prevailing rates of wages as established by the Illinois Department of Labor for each craft or type of work needed to execute the contract in accordance with 820 ILCS 130/.01 et seq. Contractor shall prominently post the current schedule of prevailing wages at the Contract site and shall notify immediately in writing all of its Subcontractors, of all changes in the schedule of prevailing wages. Any increases in costs to Contractor due to changes in the prevailing rate of wage during the terms of any contract shall be at the expense of Contractor and not at the expense of the Owner. Change orders shall, however, be computed using the prevailing wage rates applicable at the time the change order work is scheduled to be performed. Contractor shall be solely responsible to maintain accurate records as required by the prevailing wage statute and to obtain and furnish all such certified records to Owner as required by Statute including certified payroll or, in lieu thereof, a certified letter stating that the Contractor is exempt from the application of the Act. Contractor shall be solely liable for paying the difference between prevailing wages and any wages actually received by laborers, workmen and/or mechanics engaged in the Work and in every way defend and indemnify Owner against any claims arising under or related to the payment of wages in accordance with the Prevailing Wage Act. The Owner agrees to notify the Contractor or Subcontractor of the pendency of any such claim, demand, lien or suit. The Illinois Department of Labor publishes the prevailing wage rates on its website at <http://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>. The Contractor is advised that the Department revises the prevailing wage rates and the Contractor/subcontractor has an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website.

The Contractor shall also: (1) insert into each subcontract and the project specifications for each subcontract, a written stipulation that the subcontractor shall not pay less than the prevailing rate of wages to all laborers, workers, and mechanics performing work under the contract; and (2) require each subcontractor to insert into each lower-tiered contract and the project specifications for each lower tiered subcontract, a stipulation that the subcontractor shall not pay less than the prevailing rate of wages to all laborers, workers, and mechanics performing work under the contract.

§ 17.10 By execution of this Contract, the Contractor understands, represents and warrants to the Owner that the Contractor and its Subcontractors (for which the Subcontractor takes responsibility to insure that they comply with the above-mentioned Acts) are in compliance with all requirements provided by the Acts set forth in Article 17 and that they will remain in compliance for the entirety of the Work. A violation of any of the Acts set forth in this Article is cause for the immediate cancellation of the Contract. However, any forbearance or delay by the Owner in canceling

this Contract shall not be considered as, and does not constitute, Owner's consent to such violation and a waiver of any rights the Owner may have, including without limitation, cancellation of this Contract.

«»

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.)

« »

DRAFT

« »

OWNER (Signature)

« »

CONTRACTOR (Signature)

«»«»Northbrook Public Library

«»«»

(Printed name and title)

(Printed name and title)

LICENSE NO.:

JURISDICTION:

4815-0127-7280, v. 1