

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 13 day of March in the year 2025 (In words, indicate day, month, and year.)

BETWEEN the Owner:

(Name, legal status, address, and other information)

City of Pontiac Finance Department, Purchasing Division 47450 Woodward Ave Pontiac, MI 48342

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

A Joint Venture between Clark Construction Company, Inc. and White Construction Co., Inc. d/b/a Clark | White Joint Venture 3535 Moores River Drive Lansing, Michigan 48911

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

City of Pontiac Community Recreation Center 191 North Glenwood Avenue Pontiac, Michigan 48342

The Architect:

(Name, legal status, address, and other information)

MRSA. P.C. d/b/a Racer MRSA Design Studio 822 W Washington Blvd Ste 150 Chicago, IL 60607

The Owner and Construction Manager 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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1. (For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Based on the schematic design Option 3a approved by City Council with a total project cost of \$37,033,018. See Exhibit D which references the current schematic design and report.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Based on the schematic design Option 3a approved by City Council. See Exhibit D which references the current schematic design and report.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

Approximately \$31,738,671.

§ 1.1.4 The Owner's anticipated design, bidding and construction schedule.

- 10/08/24 Revised Schematic Design package to Clark for confirmation of pricing.
- 10/14/24 Architect to commence Design Development Phase (60 working days)
- 10/29/24 Construction Manager to present revised SD pricing confirmation to the City.
- 12/16/24 Architect to issue 50% DD package for soft GMP prices / estimate.
- 01/24/25 Architect intends to issue Design Development package to Owner for approval
- 02/03/25 Owner Approval Date of Design Development.
- 03/03/25 Architect to start Construction Document Phase
- 04/01/25 Anticipated Date Construction Manager to recommend long lead purchases
- 04/28/25 Architect to issue 50% CD review package
- 06/02/25 Architect to issue 90% CD review package
- 06/23/25 Architect to issue 100% CD package and Construction Manger to issue Request for Subcontractor Bids
- 08/12/25 Construction Manger to issue GMP Proposal (for all work) (approximately 6 weeks from 100% CD's)
- August 2025 GMP Approval and Construction Manager to commence construction
- 01/19/27 Anticipated Substantial Completion
- 02/21/27 Anticipated Closeout completed (45 days from Substantial Completion)

(Paragraph deleted)

In the event there are multiple bid packages, the Construction Manger shall provide a Guaranteed Maximum Proposal for each bid package, which if accepted, the bid package GMP amount will be added to the previous GMP amount.

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below: (*Identify any requirements for fast-track scheduling or phased construction.*)

See Section 1.1.4. The Construction Manager shall work with the Architect to evaluate and make recommendations to the Owner on improving the Contract Time by issuing an early bid package for earth work, foundations, structural steel, electrical and HVAC.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234TM—2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234—2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234—2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2: (List name, address, and other contact information.)

Mark Ragsdale

Director of Public Works

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47450 Woodward Avenue Pontiac, Michigan 48342

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other contact information.)

Shannon Filarecki Acting City Engineer 47450 Woodward Avenue Pontiac, Michigan 48342

§ 1.1.10 The Architect has retained or intends to retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

Architecture: Hobbs + Black Architect

Civil: Spalding DeDecker and Somat Engineering Inc.

MEP / FP S: IMEG and Scales & Associates, Inc.

Landscape: Site Design Group, Ltd.

(Paragraphs deleted)

Food: Bakergroup

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

Robert Benson AIA NCARB 822 West Washington Boulevard Chicago, Illinois 6060

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

Chad Thelen Senior Project Manager - Market Leader Clark Construction Company

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

The Construction Manager's staffing plan for the Preconstruction and Construction Phases is attached as Exhibit E.

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

Pursuant to Division 2 (Purchasing) of the City of Pontiac City Code ("Purchasing Code"), the Construction Manager shall procure subcontractor and supplier bids on behalf of the City Purchasing Agent. In accordance with the requirements contained in the Purchasing Code, the Construction Manager. shall post invitation for bids on the City's web

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page and on the MITN website with the assistance of the Purchasing Agent to the extent such assistance is needed. The invitation for bids shall direct the bidders to submit the bids directly to the Construction Manager. After the deadline to submit bids, the Construction Manager shall provide copies of the bids received to the Purchasing Agent, and review and make recommendations to the Purchasing Agent for the award of subcontracts to the lowest responsible bidder pursuant to the requirements of this Division. The Purchasing Agent shall make the final determination as to the lowest responsible bidder. The Construction Manager shall prepare Guaranteed Maximum Price ("GMP") Proposal(s) under this Agreement which shall include only Owner approved competitively bid subcontracts, conducted in accordance with the Division 2 of the City Code, for the performance of the Work. Upon written approval and authorization of the Purchasing Agent of the GMP Proposal(s) and execution of the GMP Proposal(s) executed by the Mayor or his or her designee and approved by the majority of the City Council, the Construction Manager shall directly contract with the City approved competitively bid subcontractors, pursuant to a written subcontract approved by the Purchasing Agent. The Construction Manager shall not be required to contract with anyone whom Construction Manager has reasonable objection.

Construction Manager shall provide SDI insurance on each subcontract, unless the subcontractor does not qualify for inclusion in the SDI program.

The Request for Proposals for each subcontractor will require the subcontractor to indicate whether it is capable of providing a Subcontractor Bond and the cost of the Subcontractor Bond as a separate line item based on a percent of the cost of the subcontract work. However, SDI insurance will be used instead of a Subcontractor Bond when the Subcontractor qualifies for inclusion in the SDI program. A Subcontractor Bond means: a performance bond and a labor and material payment bond in the penal sum of 100% of the subcontract amount, naming the Construction Manager and Owner as dual obligees.

- § 1.1.15 Other Initial Information on which this Agreement is based:
- § 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.
- § 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 **GENERAL PROVISIONS**

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests as well as to minimize waste, redundancy, excessive costs, inordinate delays and to keep and maintain the Project Site in a neat, safe and secure condition, during the construction. Construction Manager shall be responsible to prepare accurate estimates of the Cost of the Work to ensure that Project

costs will remain within the established GMP Budget such that the Project as designed by the Architect and reviewed by the Construction Manager shall be constructed within the Guaranteed Maximum Price ("GMP") and within the time established by this Agreement. Construction Manager further agrees to work cooperatively with the Architect to reasonably assure that the final plans and specifications, to be developed by the Architect and reviewed by the Construction Manager, shall be constructible with reasonable efficiency considering the site of the work, availability of work force, time constraints, and prevailing trade practices within the construction industry concerning Projects of this kind. Construction Manager shall be responsible to assemble Bid Packages as appropriate for a Project of this kind and to assure that proper bids are taken, and contracts entered into for all required construction services to assure efficient use of labor and materials, and to provide quality construction at the lowest reasonably obtainable cost in accordance with the Project plans and specifications. Construction Manager shall be responsible to schedule the Work efficiently through the pre-construction and construction phases of the Work, in order to permit occupancy at the earliest possible date at the lowest reasonably obtainable cost. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

- § 2.3.1 For the Preconstruction Phase, AIA Document A201TM–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1, General Provisions; Section 2.2.4, Confidential Information; Section 3.17, Royalties, Patents and Copyrights; Section 3.18, Indemnification; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 11.3 Waivers of Subrogation; Section 13.1, Governing Law; Section 13.3, Rights and Remedies; Section 15, Claims and Disputes. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.
- § 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction
- § 2.3.3 All references to the A201-2017 herein shall mean the A201-2017 as amended by the parties and attached to this Agreement.

§ 2.3.3 Construction Manager's Representations and Qualifications

- § 2.3.3.1 As an inducement to Owner to enter into the Agreement, Construction Manager represents and warrants the accuracy of any and all statements contained in Construction Manager's proposal and any other materials submitted to the Owner, which representations and warranties shall survive the execution of the Contract Documents and Final Completion of the Work and Final Payment;
- § 2.3.3.2 Construction Manager is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents in an efficient and capable manner;
- § 2.3.3.3 Construction Manager is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations under the Contract Documents, and has sufficient experience and competence to do
- § 2.3.4.4 Construction Manager is authorized to do business in the state where the Project is located and is properly licensed by all necessary governmental, public and other authorities having jurisdiction over Construction Manager and the Project;
- § 2.3.3.5 The person(s) executing the Agreement is properly authorized to do so;
- § 2.3.3.6 Construction Manager has visited the Project and become familiar with the Contract Documents and the conditions at the site; has correlated the Contract Documents with the observable, above ground site conditions, and with applicable codes, ordinances, regulation, laws, and decrees applicable to the Work on the Project, and knows of no reason why the Work cannot be performed as shown on the Contract Documents, unless previously stated otherwise in writing by Owner and Architect;

- § 2.3.3.7 The Work to be performed on this Project shall conform strictly with good and sound construction practices, the requirements of the warranties applicable to the Work and included in the Contract Documents and applicable codes, ordinances and statutes relating to the performance of the Work. The Construction Manager's performance does not include any guarantee the Architect's design meets all applicable codes and ordinances;
- § 2.3.3.8 The Construction Manager represents and warrants to the Owner that the Construction Manager has the skill, expertise and experience to satisfy the Owner's expectations within any and all legal requirements that pertain to construction means, methods, techniques and sequencing as opposed to design; and
- § 2.3.3.9 The Construction Manager represents and warrants that (i) it is not now, is not about to be and has not been excluded, debarred, suspended or been otherwise determined to be, or identified as, ineligible to participate (collectively "Debarred") in any governmental program administered by any state or federal agency (collectively, the "Governmental Programs"), (ii) it has not received any information or notice, or become aware that it is the subject of any investigation or review regarding its participation in any Government Programs, and (iii) it has not been convicted of any crime relating to any Governmental Program. The Construction Manager agrees to notify the Owner, within one (1) business day of the Construction Manager becoming aware of any of the foregoing information during the term of this Agreement.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

- § 3.1.3.1 The Construction Manager shall schedule and conduct at least bi-weekly meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.
- § 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements to the Owner and Architect on the tests of the soil and subsurface conditions as well as existing or adjacent structures,, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.
- § 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203TM-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 The Construction Manager shall provide value engineering services to the Owner and Architect during Schematic and Design Development activities to assist and facilitate the development of a scope of Work definition that is within the limitations of the GMP Budget for the Cost of the Work established by the Owner. Such value engineering services shall include cost estimating services that quantify the probable Cost of Work and other GMP inclusions organized according to the Construction Specifications Institute MasterFormat (Detailed Cost Estimates). The intention of the cost estimating service shall be to provide cost details at a sufficiently defined level, to ascertain where the designed scope of Work is being invested and to facilitate decision-making. If the Construction Manager's Detailed Cost Estimates exceed the GMP Budget for the Cost of the Work, or when, in the Construction Manager's judgment, the design intent can be better satisfied by an alternative solution, means, method, or sequence without sacrificing the quality requirements associated with the Project, the Construction Manager shall submit revision recommendations to the Owner and the Architect for consideration. The Construction Manager shall continue to provide value engineering services to find an optimal balance between budget, schedule and quality objectives for the Project until the limits of the GMP Budget for the Cost of the Work are met or the Owner allocates additional funding.

§ 3.1.3.5 The Construction Manager shall prepare a cash flow estimate indicating the anticipated schedule of payment application amounts together with each iteration of the Detailed Cost Estimates and updated with the preliminary schedule. The cash flow estimate shall be revised periodically and no less frequently than every three (3) months unless significant deviations are expected to reflect actual job conditions or as requested by the Owner.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: issuance of a Request for Proposal for construction phase services; submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. The schedule should identify long lead items that may require procurement during the terms of this Agreement such as major building equipment items including without limitation boilers, chillers, air handlers, generators and switchgear. The Construction Manager shall incorporate into the schedule time required to coordinate with the Owner's separate contractors working on procuring similar or identical equipment. The schedule must also identify when owner furnished equipment must be delivered to this Project.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The

Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

- § 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.
- § 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.
- § 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.
- § 3.1.9 The Construction Manager has provided a staffing plan for Preconstruction Phase services attached as Exhibit E.
- § 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234TM_2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

- § 3.1.11.1 The Construction Manager shall not self-perform any trade work. All trade work must be performed by Subcontractors. If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.
- § 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall conduct "outreach program(s)" and shall use its best efforts to generate interest from local, small businesses, Minority-Owned Business Enterprises ("MBE"), Disadvantage Business Enterprise ("DBE") and Women-Owned Business Enterprises ("WBE") Subcontractors and suppliers, who are certified by federal, state or local minority or disadvantage business programs, including but not limited to SAM.gov, USDOT, State of Michigan-MDOT, National Minority Supplier Development Council (NMSDC), Women's Business Enterprise National Council (WBENC), Wayne County, Wayne County Airport Authority, the City of Detroit, or other certifying agency acceptable to the Owner. The Construction Manager and its Subcontractors shall comply with 2 CFR 200.321 to seek participation/bids from MBE, DBE, WBE, and small businesses.
- § 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager and in accordance with the Purchasing Code. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager that the Owner contracts with for construction phase services and the Construction Manager shall thereafter accept responsibility for them. At the Owner's option, for items required to be ordered in advance of construction, the Owner may direct the Construction Manager to procure subcontractor and supplier bids on behalf of the City Purchasing Agent, and to provide a limited scope GMP proposal for such items, pursuant to the procurement requirements in Section 1.1.14

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

Prior to entering into this Agreement, the Construction Manager provided preconstruction services for the Project. All services performed by the Construction Manager for the Project shall be deemed to be included with and subject to the terms of this Agreement. All payments provided to the Construction Manager for preconstruction services the Project prior to executing this Agreement shall be applied to the Preconstruction Phase fee in this Agreement.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, for each Bid Package, the Construction Manager shall prepare a Guaranteed Maximum Price proposal ("GMP Proposal") for the Owner's and Architect's review, and the Owner's acceptance. The GMP Proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work for the Bid Package incorporating the Subcontractor bids, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. In the event the Owner does not accept a GMP Proposal(s), the Owner is under no obligation to continue to proceed with the Agreement, Construction Phase of the Project with the Construction Manager, or the Scope of Work in the Bid Package and may terminate the Agreement for convenience pursuant to Article 13 below and Section 14.4 of the A201-2017.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the GMP Proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by subcontractor / trade categories or systems, including Construction Manager's Staffing Plan; Construction Manager's Staffing Costs on a not to exceed basis, general conditions on a not to exceed basis; the Construction Manager's construction contingency ("Construction Contingency") set forth in Section 3.2.4; and the Construction Manager's Fee (lump sum calculated from the agreed upon Fee percentage of the Cost of the Work), Costs for payment and performance bonds to cover the full Contract Sum, and Costs for Insurance;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's GMP Proposal, the Construction Manager shall include a Construction Contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Construction Contingency amount shall be no more than three-point nine percent (3.9%) of the Direct Trade Costs, unless a higher value is agreed upon by Construction Manager and Owner in writing. Such contingency shall not be used to fund additional Construction Manager staffing cost (within the approved GMP) or to fund cost resulting from the Construction Manager's or sub-contractor negligence or willful misconduct. The Construction Manager shall notify the Owner and Owner in applicable application for payment as to specific costs that will be charged to the construction contingency. Such cost allocations will be presented with documentation and explanation of the reason behind the costs being incurred throughout the Project. Construction Manager shall not be permitted to use any contingencies unless approved in advance by the Owner in writing. Such approval shall be timely and not unreasonably withheld.

- § 3.2.4.1 Other than as stated below, the Construction Contingency shall not be used to cover items resulting from the Construction Manager's failure to satisfy the standard of care expected for a Construction Manager performing work on similar projects. The Construction Contingency shall not be used to cover the Construction Manager's SDI deductible, co-pay, or self-insured retention. Construction Contingency shall not be used to cover Construction Manager's general condition items without prior written approval from the Owner which will not be unreasonably withheld. Construction Contingency shall be the maximum amount available for the purposes stated in this Agreement and may only be used for the following: (i) items of Work within the scope of this Agreement but due to Construction Manager's error or omission failed to be included in a Subcontract; (ii) additional costs incurred as a result of a failure of a bidder to whom a portion of the Work is awarded in accordance with the Contract Documents to enter into a subcontract with the Construction Manager (iii) unanticipated market conditions and labor and material conditions; (iv) casualty losses and related expenses uncompensated by insurance or otherwise and sustained by the Construction Manager in connection with the Work, except to the extent such losses or expenses are attributable, in whole or in part, to the Construction Manager's failure to satisfy the standard of care expected for a Construction Manager performing work on similar projects; and (v) costs arising from default of unbonded or uncollectible Subcontractor when mutually agreed upon between the Owner and Construction Manager. The Construction Manager shall first submit to the Owner for approval a written request for a specific amount and justification for its use.
- § 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the GMP Proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP Proposal, its basis, or both.
- § 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the GMP Proposal in writing before the date specified in the GMP Proposal, the GMP Proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.
- § 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.
- § 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.
- § 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

- § 3.3.1 General
- § 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.
- § 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment for the entire Work ("Final GMP") or, prior to acceptance of the Final GMP, for limited portions of the Construction Phase upon the Owner's execution of the Guaranteed Maximum Price Amendment for each Bid Package. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct bi-weekly meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly

distribute minutes of the meetings to the Owner and Architect. The Owner may require the Construction Manager and Architect to attend special meetings more frequently than bi-weekly to discuss time sensitive matters.

- § 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.
- § 3.3.2.3 The Construction Manager shall develop and maintain a Request for Information (RFI) Log and/or an Issues and Answers Log to aid in the prompt transfer of information between all members of the project team including Subcontractors. The Construction Manager shall update the RFI Log on a continual basis. Unresolved issues are to be identified in each review meeting with follow-up responsibilities and response dates being assigned to the appropriate team members, including the Construction Manager.
- § 3.3.2.4 The Construction Manager shall review and establish sufficient, competent and qualified on-site organization, staffing and support as well as clear lines of authority in order to expeditiously complete the Project in accordance with the Contract Documents, in every aspect, on a totally coordinated basis. The Construction Manager shall maintain a competent full-time staff at the site to supervise, schedule and coordinate the Work of all Subcontractors in accordance with the Owner's objectives including cost, time for completion and quality of the Work. The project staff shall comprise the individuals identified in the Construction Manager's Staffing Plan attached as Exhibit E. No members of the key staff on the Staffing Plan shall be changed by addition, deletion, or substitution without the prior written consent of the Owner.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above. The Construction Manager shall review requests for changes with the Owner, and with the Owner's approval, obtain quotations from affected Subcontractors. Bulletins to Subcontractors shall define the scope of the change and require pricing using lump sum, time and materials or cost of Work for all items of Work, including overhead and profit as may be defined in this Agreement. Where both additions and deductions are involved, each should be calculated separately. Construction Manager shall be responsible for reviewing the pricing submitted by Subcontractors for accuracy, completeness, and reasonableness.

ARTICLE 4 **OWNER'S RESPONSIBILITIES**

§ 4.1 Information and Services Required of the Owner

- § 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.
- § 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

- § 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.
- § 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- **§ 4.1.4.1** The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- § 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
- § 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
- § 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.
- § 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234[™]−2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to communicate on behalf of the Owner with respect to the Project. The Owner's representative shall communicate decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133TM_2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

A lump sum of \$21,020.00.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit F for hourly billing rates to be used for change order work, if any.

Individual or Position

Rate

- § 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.
- § 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.
- § 5.1.4 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work provided that the Construction Manager demonstrates entitlement as required by the Contract Documents.

§ 5.2 Payments

- § 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.
- § 5.2.2 Payments are due and payable to the Construction Manager within thirty (30) days after the Architect certifies the pay application for payment. Amounts unpaid after such time shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

five percent (5%) per annum. Requests for payment of interest shall be made in accordance with MCL 125.1562

ARTICLE 6

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

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

1.9 % of Cost of the Work

The Construction Manager's Fee shall be for all overhead, profit and home office labor and expense.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

1.9% of the change in the Cost of Work. The Construction Manager's Fee shall not be adjusted for Changes in the Work that in the aggregate do not cause the final Cost of the Work to exceed 105% of the Full GMP amount.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed seven-five percent (75 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

Insurance costs:

Payment and Performance Bonds:

Warranty Bond:

Builder's Risk Insurance (if not provided by Owner)

0.75% of the Cost of the Work

0.60% of the Cost of the Work

0.01% of the Cost of the Work

SDI Insurance 1.15% of the Cost of each subcontract*

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. The Guaranteed Maximum Price Amendment shall also incorporate the Construction Manager's Staffing Costs (attached as Exhibit F) and General Conditions (attached as Exhibit G) as not to exceed line items. The Construction Manager guarantees that the total amount of the Construction Manager's Staffing Plan costs and General Condition costs shall not exceed the total amount stated for each in section 7.1.1.1 below and that any such costs that exceed each amount shall be paid by the Construction Manager without reimbursement by the Owner, unless such excess amount is agreed to in writing by the Owner. Furthermore, the Guaranteed Maximum Price Amendment shall incorporate the Construction Manager's Staffing Plan attached as Exhibit F

§ 6.3 Changes in the Work

(Paragraphs deleted)

§ 6.3.1§ 6.3.1.1 Subject to Owner's written approval, the Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction. The Construction Manager shall not be entitled to compensation or additional time for minor changes in the Work unless the Owner approves of the costs or time in writing before the Construction Manager commences the minor change Work. The Architect has no authority to approve aesthetics related to the Work. The Architect does have authority to make recommendations to the Construction Manager and Owner for deviations of the Work.

- § 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.
- **§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to

^{*} Each subcontractor that qualifies will be included in the Construction Manager's SDI Program. In the event a Subcontractor does not qualify for inclusion in the SDI Program, the cost of the Subcontractor to provide a Subcontractor Bond (as defined in Section 1.1.14 above) will be added as a Cost of the Work.

subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

- **§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.
- **§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

- § 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.
- § 7.1.1.1 Notwithstanding anything contained in herein to the contrary, the Construction Manager shall include all reimbursable staffing and general condition costs including but not limited to its own labor, general requirements, staff costs, supervision, cleanup costs, temporary facilities, and other costs identified in the Construction Manager's Staffing Plan and General Conditions exhibits based on an agreed upon not to exceed line items, which amounts shall be included in the GMP Amendment(s).

The Construction Manager shall include its Construction Manager's Staffing Plan and General Conditions costs on its pay applications charged on a negotiated hourly basis, using the Personnel Billing Rates Exhibit F or as otherwise agreed by the Parties in the GMP Amendment. Rates shall be in effect for the duration of the Project with no annual increases.

The Construction Manager's Staffing Costs shall not exceed \$853,844 for the Project based on an 18-month construction schedule using the rates contained in Exhibit F.

The Construction Manager's General Condition costs shall not exceed \$47,286 for the Project based on an 18-month construction schedule using the rates contained in Exhibit G.

- § 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. The Construction Manager waives any claim for costs not so approved in advance in writing by the Owner. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.
- § 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.
- § 7.2 Labor Costs
- § 7.2.1 [Intentionally Omitted]
- § 7.2.2 Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval, in accordance with the billing rates shall be set forth in the Personnel Billing Rates Exhibit F.
- § 7.2.2.1 Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed in the Construction Manager's Staffing Plan, in accordance with the billing rates shall be set forth in the Personnel Billing Rates Exhibit F.

- § 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged with the Owner's prior written approval at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- § 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.
- § 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

- § 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction. Owner provided equipment is not included in the Cost of the Work.
- § 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager or returned as a credit. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

- § 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.
- § 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.
- § 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.
- § 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.
- § 7.5.5 Costs of materials and equipment suitably stored, secured and insured off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

- § 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, unless such costs are already stated as a percentage of the Cost of the Work in Section 6.1.7.
- § 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

- § 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.
- § 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.
- § 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.
- § 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.
- § 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.
- § 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.
- § 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.
- § 7.6.7 Costs of document reproductions and delivery charges.
- § 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.
- § 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.
- § 7.6.10 [Intentionally Omitted]
- § 7.6.11 [Intentionally Omitted]
- § 7.7 Other Costs and Emergencies
- § 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.
- § 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.
- § 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.
- § 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refused to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work:
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- Costs for services incurred during the Preconstruction Phase.
- Costs for transportation and subsistence incurred by Construction Manager's employees stationed at Construction Manager's principal office or other office;
- Expenses for travel, including Contractor-supplied vehicles used for personal use, incurred by Construction Manager's employees while traveling for purposes other than the direct execution of the Work:
- Fines other than those due to the acts or omissions of Owner; .12
- Costs incurred due to labor disharmony, unrest, or strikes by Construction trades, including, but not limited to, delays, security, legal expenses, fines and work stoppages or slowdowns, except to the extent otherwise expressly provided for in the Contract Documents;
- Consultants to the Construction Manager not previously approved, in writing, by Owner;
- .15 Matters between Owner and Construction Manager and any of its Subcontractors or suppliers requiring legal representation;
- .16 Corporate accounting, check and accounting processing cost;
- Except with the Owner's prior written consent and agreement, costs of any type incurred by Construction .17 Manager not included within the scope of a GMP Amendment;
- .18 The services of Construction Manager's purchasing, estimating and accounting departments and clerical staff at Construction Manager's principal or other office unless expressly listed in Section 7.1;
- Amounts required to be paid by Construction Manager for federal, state or local income or franchise taxes;
- .20 Other costs, damages, or expenses specifically excluded elsewhere in the Contract Documents;
- .21 Costs incurred by the Construction Manager for overtime, extra shift work or similar premium pay unless the need for such overtime, extra shift work and/or similar premium pay is caused by a delay entitling the

- Contractor to additional time under Section 8.3.1 of the A201-2017, and such measures are requested and approved in writing by Owner and/or requested by Contractor in writing and approved in writing by Owner;
- 22 Construction Manager's taxes on income or profit, real or personal property taxes, or any franchise or similar taxes or fees;
- .23 Any penalties or fines incurred as a result of Construction Manager's failure to comply with applicable law and regulations;
- .24 Any losses and/or expenses sustained by Contractor (or any subcontractor regardless of tier) that are not compensated by insurance or otherwise, where such losses and/or expenses are due to criminal acts, intentional malfeasance and/or dishonesty by any employee of Contractor (or any subcontractor regardless of tier); and
- .25 Construction Manager's SDI deductible, co-pay, or self-insured retention.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 All trade work shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents.

§ 9.1.1 [Intentionally Omitted]

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10. Construction Manager shall provide copies of all executed subcontracts to Owner.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of five years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

- § 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.
- § 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
- § 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified (by the Architect) to the Construction Manager within thirty (30) days after the Architect certifies the Application for Payment and not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect certifies the Application for Payment and not later than sixty (60) days after the Construction Manager properly submits the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)
- § 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.
- § 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents and approved by Owner and Architect. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.
- § 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. If the Owner believes at any time that the schedule of values is unbalanced, the Construction Manager will, after review and agreement with the Owner, adjust the schedule of values accordingly.
- § 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.
- § 11.1.5.3 When the Construction Manager allocates costs from the Construction Contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.
- § 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- § 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- § 11.1.7.1 The amount of each progress payment shall first include:
 - That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- § 11.1.7.2 The amount of each progress payment shall then be reduced by:
 - The aggregate of any amounts previously paid by the Owner;
 - .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
 - Any amount for which the Construction Manager does not intend to pay a Subcontractor or material .3 supplier, unless the Work has been performed by others the Construction Manager intends to pay;
 - For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
 - .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
 - Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

10% retention in each Pay Application until the Work is 50% complete in accordance with MCL 125.1563.

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

No retention will be held on the Construction Manger's Fee, General Conditions, Bond or Insurance costs.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

Retainage may be reduced in accordance with MCL 125.1563.

§ 11.1.8.3

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

Retainage shall be released in accordance with MCL 125.1563.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

- § 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.
- § 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.
- § 11.1.13 In taking action on the Construction Manager's Applications for Payment, the Architect and the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager.
- § 11.1.14 By submitting the Application for Payment, Construction Manager represents that the Work covered by the Application has progressed to the point indicated, has been performed in accordance with the requirements of the Contract Documents and all amounts shown on previous Applications have been paid to Subcontractors and suppliers.
- § 11.1.15 The Architect shall be entitled to withhold certification and the Owner shall be entitled to withhold payment as provided in Article 9 of the General Conditions and the Contract Documents.
- § 11.1.16 Pursuant to and in accordance with MCL 125.1564 and at the option of the Owner, the Owner and Construction Manager shall submit those matters described in MCL 125.1564(3) to the decision of an agent as defined in the Public Acts of 1980.

§ 11.2 Final Payment

- § 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when
 - the Construction Manager has fully, properly and timely performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
 - .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final and proper Application for Payment;
 - .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2; and
 - .4 Construction Manager's surety, if any, has consented in writing to release of final payment.
- § 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.
- § 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.
- § 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.
- § 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction

Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

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

five percent (5%) per annum. Requests for payment of interest shall be made in accordance with MCL 125.1562

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Claims

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017.

§ 12.1.2

(Paragraphs deleted) [Intentionally Omitted]

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows: (Check the appropriate box.)

	Arbitration pursuant to Article 15 of AIA Document A201-2017
[X]	Litigation in a court of competent jurisdiction
r 1	Other: (Specify)

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

- § 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for verifiable and documented Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.
- § 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.
- § 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.
- § 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:
 - .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
 - .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
 - .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.
- § 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.
- § 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

- § 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:
 - .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
 - .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an

- amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

Not Applicable.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars and 00/100 (\$1,000,000.00) for each occurrence and Two Million Dollars and 00/100 (\$2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million Dollars and 00/100 (\$1000,000.00) 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.

- § 14.3.1.3 The Construction Manager 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 liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.
- § 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million Dollars and 00/100 (\$1,000,000.00) each accident, One Million Dollars and 00/100 (\$1,000,000.00) each employee, and One Million Dollars and 00/100 (\$1,000,000.00) policy limit (\$1,000,000.00) policy limit.
- § 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Five Million Dollars and 00/100 (\$5,000,000.00) per claim and Five Million Dollars and 00/100 (\$5,000,000.00) in the aggregate.

(Table deleted) (Paragraphs deleted)

- § 14.3.1.7 Additional Insured Obligations. Construction Manager shall provide additional insured obligations in accordance with Section B.3.1.3 of the Exhibit B.
- § 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.
- § 14.3.1.9 Cancellation Notice. Workers' Compensation Insurance, Commercial General Liability Insurance, and Motor Vehicle Liability Insurance, as described above, shall be endorsed to state the following: "It is understood and agreed Thirty (30) days, or ten (10) days for non-payment of premium, Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to:

Purchasing Manager City of Pontiac 47450 Woodward Avenue, Pontiac, MI 48342"

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133TM_2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

- § 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133TM–2019 Exhibit B, and elsewhere in the Contract Documents.
- § 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203[™]–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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

§ 14.5 Other provisions:

§14.5.1 To the extent the Construction Manager has provided Preconstruction services for the Owner prior to executing this Agreement, such services shall be deemed to be included with and subject to the terms of this Agreement.

§14.5.2 The Construction Manager and its Subcontractors shall comply with all applicable State and Federal laws, regulations, executive orders, policies, guidelines, and requirements to the extent they relate to the use of State and Federal funds for the Project, including but not limited to Exhibit C.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- 1 AIA Document A133TM–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133TM-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133TM–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201TM–2017, General Conditions of the Contract for Construction, as modified.

(Paragraph deleted)

.3 Other Exhibits:

(Check all boxes that apply.)

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT DRAFT FORM INSURANCE AND BONDS

EXHIBIT C FEDERAL FUNDING REQUIREMENTS

EXHIBIT D SCHEMATIC DESIGN AND REPORT

EXHIBIT E CONSTRUCTION MANAGER'S STAFFING PLAN

EXHIBIT F PERSONNEL BILLING RATES

EXHIBIT G GENERAL CONDITIONS

(Row deleted)

.7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

N/A

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

OWNER

City of Pontiac

OWNER (Signature)

Khalfani Stephens

Khadfani Stephens, Deputy Mayor

CONSTRUCTION MANAGER

Clark | White Joint Venture, by:

Clark Construction Company, Inc., Joint Venturer

(Signature)

By: Dave Reece

Its: Chief Operating Officer

and

White Construction Co., Inc., Joint Venturer

DocuSigned by:

BBF857DEFE00481...

(Signature)

By: Donovan J. White Its: President and CEO

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

City of Pontiac Community Recreation Center 191 North Glenwood Avenue Pontiac, Michigan 48342

THE OWNER:

(Name, legal status and address)

City of Pontiac

THE ARCHITECT:

(Name, legal status and address)

MRSA, P.C. d/b/a Racer MRSA Design Studio 822 W Washington Blvd Ste 150 Chicago, IL 60607

THE CONTRACTOR/CONSTRUCTION MANAGER

(Name, legal status and address)
A Joint Venture between Clark Construction Company, Inc. and White Construction Co., Inc. d/b/a Clark | White Joint Venture
3535 Moores River Drive
Lansing, Michigan 48911

TABLE OF ARTICLES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

The term "Work" means all necessary and reasonably inferable construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work shall include those items specifically included in the Drawings and Specifications and those which are reasonably inferable from that which is specified and/or shown as being necessary to complete items shown in the Drawings and Specifications, including, without limitation, those items required to allow the Project to be used for its intended purpose when completed (as that intended purpose is reflected in the Drawings, Specifications and Contract Documents). The Work shall include the obligation of the Contractor or the Contractor's Subcontractors to visit the Project site before submitting a proposal. Such visit shall be for the purpose of familiarizing the Contractor and the Subcontractors with the conditions as they exist and the character of the operations to be carried out under the Contract Documents; including all existing site conditions, access to the site, and physical characteristics of the site and surrounding areas.

§ 1.1.3.1 Nothing in the Agreement, or in these General Conditions shall be interpreted as imposing on the Owner, or any of its agents, employees, members, managers, officers, directors, affiliates or consultants, any duty, obligation or authority with respect to any items that are not intended to be incorporated into the completed Project, or that do not comprise the Work, including but not limited to shoring, scaffolding, hoists, weather-proofing, or any temporary facility or activity, all of which are the sole responsibility of the Contractor.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

(Paragraphs deleted)

§ 1.1.8 [Intentionally Omitted]

§ 1.1.9 KNOWLEDGE

The terms "knowledge," "recognize" or "discover" and similar terms in the Contract Documents shall mean that which the Contractor should know, recognize or discover in the exercise of the skill, Standard of Care and diligence required by the Contract Documents. Likewise, the term "reasonably inferable" shall mean reasonably inferable by a Contractor familiar with the Project and exercising the skill, Standard of Care and diligence required by the Contract Documents.

§ 1.1.10 AS-BUILT DRAWINGS

As-built drawings are prepared by the Contractor showing on-site changes to the original Drawings reflecting the Project as constructed.

§ 1.2 Correlation and Intent of the Contract Documents

- § 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
- § 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.
- § 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- § 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. In the event of a conflict, inconsistency or ambiguity among the Contract Documents, such Documents have the following priority: (1) Modifications as defined by Subsection 1.1.1 of these General Conditions; (2) Specifications; (3) Drawings; (4) the Agreement, as modified by the parties; and (5) these General Conditions, AIA Document A201-2007, as modified by the parties. However, in the event of conflicting provisions among the Contract Documents that are not resolved by this order of priority, the Architect in consultation with the Owner shall determine which of the conflicting requirements shall govern, with the general guideline that the more stringent requirement, higher quality or more expensive material will be required, the cost and time of which shall be included in the GMP Amendment, unless, in the opinion of the Architect and subject to the Owner's approval, another requirement is more appropriate. The Owner's decision shall be final in such case but subject to the dispute resolution procedures set forth herein. The Contractor shall cause the obligations of this section to be incorporated into each and every contract with its Subcontractors, suppliers and consultants. This provision shall not relieve the Contractor of its reporting duties under Sections 3.2 and 3.7 of these General Conditions. The Contractor shall cause the obligations of this section to be incorporated into each and every contract with its Subcontractors, suppliers and consultants.
- § 1.2.4 Before ordering any materials or doing any Work, the Contractor and each Subcontractor and Sub-subcontractor shall verify measurements at the Project site, as reasonably available, and shall be responsible for the correctness of such measurements. Any difference which may be found shall be submitted to the Architect and approved by the Owner for resolution before proceeding with the Work.

- § 1.2.5 If an item is shown on the Drawings, but not specified, the Contractor shall provide the item of the same quality as similar items specified. If an item is specified, but not shown on the Drawings, it shall be located as directed by the Architect.
- § 1.2.6 The Drawings are indications of the design intent, as well as specific instructions. Any typical "details" (as such term is used in the industry) of a specific area included on Drawings show the intent of all similar areas. If questions arise about the construction of an area not specifically detailed, the Contractor shall consult with the party that prepared the plans and specification, who will provide further details and instructions. Such further documentation, if consistent with the Contract Documents, shall not alter the Contract Sum.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

- § 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.
- § 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.
- § 1.5.3 Contractor shall maintain and update a clean set of construction documents and "as-built" drawings, in both hard copy and digital form of the as-built conditions, which shall include any field coordination changes, request for information "RFI", submittals and/or alterations from the Contract Documents which was approved by the Architect, as otherwise authorized or required in accordance with any other provision in these General Conditions and any Supplementary Conditions, to complete the Work. The Contractor shall provide the Architect a hard copy and digital copy of the "as-built" drawings for its generation of as-built record drawings. The "as-built" drawings shall also include as-built site surveys.

§ 1.6 Notice

- § 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.
- § 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties shall establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203TM–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202TM–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

- § 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.
- § 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

- § 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.
- § 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.
- § 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.
- § 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

- § 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- § 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.
- § 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.
- § 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- § 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor shall promptly notify Owner of any discrepancy or inaccuracy of the information which it discovers, and the Owner shall correct any such inaccuracy. Failure to notify Owner within seven (7) days of when the inaccuracy is discovered shall act to bar any Claims by Contractor arising from the inaccuracy of any such information.
- § 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, material or equipment so as to be able to complete the Work within the Contract Time, or disregards the instruction of Architect or Owner when based on the requirements of the Contract Documents, then the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Nothing herein shall be deemed to limit the Owner's rights with respect to termination as set forth in Article 14 of the General Conditions or any other rights available to the Owner under the Contract Documents as well as any rights or remedies available at law or equity.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. Any reference in the General Conditions or other Contract Documents to "Contractor" or "General Contractor" shall mean and include Construction Manager as may be identified in the Agreement.

- § 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.
- § 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

- § 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.
- § 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.
- § 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. The Contractor shall notify the Architect and the Owner of materials, systems, procedures or methods of construction indicated in the Contract Documents which the Contractor believes may be incorrect, inadequate, or obsolete. The Architect, in consultation with the Owner, shall make a determination in writing of the issues raised in the Contractor's notice.
- § 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences

or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

- § 3.3.1.1 The Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a workmanlike manner under the full-time supervision of a qualified foreman. The Contractor shall advise the Owner and Architect if the Contractor has knowledge of: (a) any specified product that deviates from good construction practices; (b) Specifications that will adversely affect any warranties; and (c) any objections which the Contractor may have to the Specifications.
- § 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.
- § 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- § 3.3.4 In the event that Contractor discovers any damage to or deficiency in the Work, Contractor shall provide Owner prompt written notice of any such damage, defect or deficiency of any Work or Equipment whether furnished by Owner or Contractor. Should Contractor fail to notify Owner of any such damage or deficiencies that Contractor could have reasonably discovered, by inspection or testing in accordance with the Contract Documents, Contractor shall be responsible to remedy the damage, defect or deficiency at its sole cost and expense

§ 3.4 Labor and Materials

- § 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. After executing the GMP Amendment, and otherwise expressly stated in the GMP Amendment relative to specific Work, Contractor acknowledges and agrees that it bears the sole risk of any market changes or fluctuations regarding price or availability relative to labor and materials during the performance of the Work on the Project.
- § 3.4.1.1 Unless otherwise provided in the Contract Documents, all equipment, material, and articles incorporated into the Work shall be new and of the most suitable grades. The Contractor shall inspect all materials delivered to the Project and shall reject any observably defective materials. Materials shall conform to manufacturer's standards in effect at the date of execution of the Agreement and shall be installed in strict accordance with the manufacturer's latest direction. Contractor shall, if required by Owner or Architect, furnish satisfactory evidence as to the kind or quality of any materials. All package materials shall be shipped to the Project in the original containers, clearly labeled, and delivery slips shall be submitted with bulk materials, identifying thereon the source. The Contractor shall coordinate delivery, receipt, removal of packing waste, and installation of Owner supplied equipment and materials.
- § 3.4.1.2 All material delivered to the job site shall be stored and handled in a manner to preclude inclusion of any foreign substances or causing of any discoloration therein and to prevent any damage thereto which might reduce its effectiveness as part of the Work. All Work described or required under the Contract Documents shall be performed in a neat, skillful and workmanlike manner in accordance with industry-leading recognized and published trade practices. Only competent workmen who satisfactorily perform their duties shall be employed to accomplish the Work, and, when requested by Owner or Architect, Contractor shall discharge and shall not reemploy any person who commits trespass or who is, in the Owner's reasonable opinion, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable.
- § 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the

consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. In making a request for a substitution, the Contractor represents and warrants the following:

- § 3.4.2.1 Contractor investigated the proposed product and determined that it is equal or superior in all respects to that which was specified;
- § 3.4.2.2 Contractor shall provide an equal or greater warranty for the substitution than the Contractor would for that which was specified;
- § 3.4.2.3 Contractor certifies that the cost data presented is complete and includes all related costs under the Contract, except the Architect's redesign costs; and
- § 3.4.2.4 Contractor shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects in accordance with the Construction Schedule.
- § 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.
- § 3.4.3.1 Owner is committed to supplier diversity and shall enforce all non-discrimination requirements. Contractor and its Subcontractors engaged in the Project shall provide an equal opportunity for employment and shall not discriminate in violation or regulations upon the basis of race, color, religion, sex, age, or national origin or other applicable factors.
- § 3.4.3.2 Contractor shall comply with the Build America, Buy America Act as further stated in Paragraph B.9 of Exhibit B to the Agreement.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor guarantees that: (1) all Work performed hereunder will be performed in a good and workmanlike manner and in accordance with all federal, state and local laws, rules and regulations applicable to Contractor's performance of the Work; and (2) the Work and the product resulting from the Work and each item of material or equipment supplied hereunder shall conform to the terms and conditions of the Contract Documents and be free from defects in workmanship and materials. Without limiting the foregoing, Contractor will assign to Owner any and all rights to enforce any manufacturer's warranty on the materials or equipment Contractor supplies hereunder. This warranty is in addition to any and all other warranties, expressed or implied, extended by the Contractor pursuant to the provisions of this Contract or applicable law. The Contractor shall obtain from manufacturers and suppliers guarantees and warranties according to the Contract Documents and upon the optimum terms and longest periods reasonably obtainable. The Contractor shall and does assign to the Owner the benefits of all warranties and guarantees of all Subcontractors, but such assignment shall not relieve the Contractor of its warranty obligations to the Owner under the Contract Documents.

§ 3.5.2 All material, equipment, or other special 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 9.8.4.

§ 3.6 Taxes

User Notes:

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

- § 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies (including, but not limited to, sewer tap fees, capacity charges, acreage fees and bonds required by any public entity) necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Copies of any and all permits, licenses, and certifications shall be delivered to the Architect and Owner as soon as they are obtained. Contractor shall deliver the originals of such permits, licenses, and certificates to the Architect together with the Application for Final Payment.
- § 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.
- § 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

(Paragraphs deleted)

§ 3.7.4 Latent or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise latent physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the GMP or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. No adjustment in the GMP or Contract Sum shall be permitted, however, in connection with a latent or unknown condition that does not differ materially from those conditions disclosed by the Contractor's prior inspections, tests, reviews, and preconstruction services for the Project, or inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make in connection with the Project.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

- and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2; and
- **.4** all allowances shall be tracked and accounted for with an "open book" approach. Allowance summaries will be viewable at any reasonable time by the Owner.
- § 3.8.3 Contractor shall submit a written quotation to the Owner of the costs associated with an allowance prior to incurring any costs associated with the allowance and in accordance with the approved Project Schedule so as to allow the Owner sufficient time to review the information and make a decision. Under no circumstances shall Contractor incur any costs related to an allowance on behalf of Owner without prior written authorization of Owner. Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

- § 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.
- § 3.9.2 Unless otherwise identified in the Contractor's Staffing Plan attached to the Agreement, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.
- § 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's written consent, which shall not unreasonably be withheld or delayed. Contractor shall not make any changes to Contractor's Project team personnel as identified in Contractor's Staffing Plan attached to the Agreement without prior written consent of Owner. Owner shall have the right, at any time, to direct a change in Contractor's Project team personnel if their performance is unsatisfactory to Owner. In the event of such demand, Contractor shall, within seven (7) days after notification, replace said personnel with a person satisfactory to Owner, in Owner's sole discretion.

§ 3.10 Contractor's Construction and Submittal Schedules

- § 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.
- § 3.10.1.1 The parties agree, and the Contractor acknowledges that minor hindrances and delays are ordinarily encountered on projects of this type. Subject to Section 8.3.1, the parties specifically anticipate and contemplate such minor hindrances and delays, including, but not limited to, the action or inaction of suppliers, Subcontractors, and other contractors, and weather conditions. The Contractor agrees that such delays of the type as set forth above are included in the Contract Sum and Construction Schedule and that they shall not constitute the basis of a time extension or a claim for additional compensation of any type.
- § 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

- § 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.
- § 3.10.4 The Construction Schedule shall indicate the following in addition to the information required by the other Sections of these General Conditions:
 - .1 a schedule of production of drawings, specifications and other documents required for the award of Subcontracts for construction (providing for appropriate periods for review, which periods shall not exceed ten (10) days where practical);
 - .2 a listing of all long-lead-time items and a schedule for the acquisition and delivery of such items;
 - .3 a detailed construction progress schedule showing the different stages of progress required in the Work and which clearly reveals the critical path to Substantial Completion;
 - .4 a schedule for the processing of shop drawings;
 - .5 the itemization of Work provided by the Owner or others for the Contractor's incorporation into the Work; and
 - .6 the completion of punch list work and the close out of the Project.
- § 3.10.5 The Construction Schedule shall provide a graphic representation of all activities and events that will occur during performance of the Work; identify each phase of construction and occupancy; set forth dates that are critical in ensuring the timely and orderly completion of the Work. The schedule shall, if directed by the Owner, be resource-loaded indicating anticipated labor and material usage and amounts to be billed to the Owner so as to allow for cash flow projections. Upon acceptance by the Owner and the Architect, the Construction Schedule shall become part of the Contract Documents. The Contractor shall monitor the performance of the Work for conformance to the accepted Construction Schedule and shall promptly advise the Owner of any potential delays.
- § 3.10.5.1 The Contractor shall submit updates to the Construction Schedule on no less than a monthly basis and shall submit updates with each Application for Payment. Submittal of said schedule shall be a condition precedent to the Owner processing the Contractor's Application for Payment. The updates shall reflect actual conditions and progress since the prior update. In the event that any update to the Construction Schedule indicates the possibility of a delay to the Project, the Contractor shall propose an affirmative plan to correct the delay including the use of overtime and/or additional labor within ten (10) days of the occurrence giving rise to the delay. In no event shall an update to the Construction Schedule constitute a notification of a Claim or a request for an adjustment to the Contract Time or Contract Sum.
- § 3.10.6 If the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the approved Construction Schedule or the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of the Work, which shall include without limitation, working overtime or additional shifts, supplying additional manpower and/or equipment and other similar measures. These corrective measures shall continue until the progress of the Work complies with the approved Construction Schedule and the Contract Documents. Subject to Section 8.3.1, and except as otherwise provided in the Contract Documents, the Contractor shall not be entitled to any adjustment in the Contract Sum in connection with any corrective measures ordered by the Owner under this Section, unless and to the extent the Work was behind schedule for reasons that entitled the Contractor to additional time to perform the Work under the Agreement.
- § 3.10.7 The Contractor shall be solely responsible for the original Construction Schedule, any and all updates, changes, alteration or amendments to the Construction Schedule. Neither the Owner, the Architect nor any of the Owner's consultants shall be responsible for the accuracy or sufficiency of any Construction Schedule prepared or presented to the Owner, Contractor warrants to Owner that the Construction Schedule has been prepared in good faith, is accurate to the best of Contractor's knowledge and that the Owner may rely thereon in regard to any and all decision or actions by the Owner in regard to the Project.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

- § 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- § 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- § 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.
- § 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.
- § 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. Submittals by the Contractor in digital format shall be endorsed by the Contractor in writing, either digitally or on paper. Submittals which are not marked as reviewed for compliance with the Contract Documents and confirmed by the Contractor may be returned by the Architect without action and all costs of return shipping and delivery of the unsigned submittal shall be charged to the Contractor.
- § 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- § 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. Any Work performed or materials ordered before approval of the required submittal shall be at Contractor's sole risk that the Work or materials may be rejected by the Architect or the Owner.
- § 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work with the Owner's written approval, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.
- § 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.
- § 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities

for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

- § 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
- § 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

- § 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.
- § 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.
- § 3.14.3 Contractor shall locate, protect, and save from injury utilities of all kinds, either above or below grade, inside or outside of any structure, found in the areas affected by its Work. Contractor shall be responsible for all damage caused to such utility by the operation of equipment or delivery of materials or as the direct or indirect result of any of its Work and shall repair all such damage at its expense and as a part of the Work included in the Contract Documents. Contractor shall not be entitled to any increase in the Contract Sum or Contract Time on account of such damage to any utility unless the utility is defined to be a latent or unknown condition per Section 3.7.4.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. On a regular basis throughout the performance of the Work, the Contractor shall be responsible for continuous removal of all debris, waste materials, rubbish, surplus materials or other waste from the Project site. Contractor and all Subcontractors shall deposit debris exclusively in designated waste containers at a location identified by the Owner. Neither the Contractor nor any Subcontractor shall use any of the Owner's facilities for the deposit of debris or waste materials of any kind or sort. The Contractor and all Subcontractors shall strictly comply

with the requirements of federal, state and local laws, ordinances, regulations and lawful orders as well as with the Owner's directives relative to maintaining the Project site.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

- § 3.18.1 To the fullest extent permitted by law, the Contractor on behalf of itself, its Subcontractors, its agents and anyone directly or indirectly employed by them, or anyone for whose acts they may be liable (all of said parties are herein sometimes collectively referred to as the "Indemnitors") shall, at its own expense, indemnify, defend (with counsel reasonably acceptable to Owner) save, and hold harmless the Owner, and all its elected and appointed officials, employees and volunteers, boards, commissions, and/or authorities and board members, including employees and volunteers thereof, all entities related to the Owner, all principals of the Owner or its related entities, their respective employees, partners, agents and anyone else acting for or on behalf of Owner and its related entities, their respective partners, and anyone else acting for or on behalf of any of them (all of said parties are herein collectively referred to as the "Indemnitees") 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), except to the extent caused by the negligent acts or omissions of the Indemnitees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.
- § 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- § 3.18.3 To the fullest extent permitted by law, the Indemnitors shall also indemnify and defend (with counsel reasonably acceptable to Owner) the Indemnitees from and against any and all fines, penalties, claims, damages, liability, losses and expenses, including attorneys' fees, arising out of or relating in any way to (i) any violation of or failure to comply by an Indemnitor with any law, statute, ordinance, rule, regulation, code, requirement or lawful order of any public authority with jurisdiction over the Work, (ii) an Indemnitor's means, methods, procedures, techniques or sequences of execution or performance of the Work, (iii) an Indemnitor's failure to secure and pay for permits, fees, approvals, licenses or inspections as required under the Contract Documents, and (iv) any violation of any permit or other approval by the an Indemnitor.
- § 3.18.4 The Contractor shall indemnify and hold harmless the Owner from and against all costs and fees, including actual attorney fees, incurred in enforcing the Contractor's obligations for defense and indemnification in the Contract Documents.
- § 3.18.5 With respect to Contractor's duty to defend, (a) Owner, at its option, may select counsel to defend any demand or claim brought against it without impairing any obligation of Contractor to provide indemnification; and (b) in no event shall Contractor settle any claim without prior approval by Owner.

§ 3.18.6 To the extent any indemnification requirement contained in Section 3.18 is deemed violative of any law, that provision shall be deemed modified so that Contractor shall be required to furnish the greatest level of indemnification to the Indemnitees as was intended by the parties hereto.

ARTICLE 4 ARCHITECT

§ 4.1 General

- **§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.
- § 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

- § 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.
- § 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.
- § 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

- § 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- § 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- § 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with

information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- § 4.2.7.1 The Architect shall have the authority to reject any shop drawing that violates the provisions of Section 3.12 of these General Conditions, and no extension of the Contract Time shall be allowed as a result of such rejection.
- § 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4 with the Owner's written approval. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.
- § 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.
- § 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.
- § 4.2.11 The Architect will interpret and suggest resolution of matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- § 4.2.12 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.
- § 4.2.13 [Intentionally Omitted]
- § 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. If any response to a Request for Information is asserted to be a change in the Work, the Owner must be notified in writing immediately.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 The term "Subcontractor(s)" means a person or entity retained by Contractor or with any other Subcontractor (at any tier), including without limitation all sub-subcontractors and suppliers (at any tier), as an independent contractor to provide labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

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

§ 5.2.1 The Contractor shall procure Subcontractor bids and award contracts consistent with Section 1.1.14 of the Agreement.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. If, after award of a subcontract, the Owner objects to a person or entity to whom Owner has previously consented, the Contract Sum and Contract Time may be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively.

§ 5.2.3 [Intentionally Omitted]

§ 5.2.4 The Contractor shall not seek bids or otherwise substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 Upon request, Contractor shall provide Owner an executed copy of any and all subcontracts, purchase orders, and other agreement relating to the Work.

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

Owner shall not be responsible to pay Subcontractor for any amounts previously paid to the Contractor for the Subcontractor's Work. Notwithstanding the Owner's acceptance of the assignment, the Contractor shall remain responsible for the Contractor's rights and obligations under the Subcontract arising prior to the Owner's acceptance of the assignment, at Contractor's sole cost. Contractor shall use commercially reasonable efforts to assist the Owner in the enforcement of the subcontract subsequent to such acceptance of the assignment, at Contractor's sole cost. The provision of this Section shall survive termination of the Agreement.

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

- § 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.
- § 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- **§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. Contractor and its Subcontractors shall use their best efforts to cooperate with Owner and any other entity or other contractor or subcontractor involved in the Work on the Project. In order for the Work to be completed in an expeditious manner, Contractor agrees that it will use all reasonable efforts in order to ensure that such separate contractors have a reasonable opportunity to complete their work as and when required.
- **§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

- § 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- § 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.
- § 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.
- **§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.
- **§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible. and all the costs will be assessed against the next Application for Payment by the Contractor.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

- § 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- § 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect with the Owner's written approval.
- § 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.
- § 7.1.4 Contractor shall proceed with its performance obligations as changed by a Change Order, Construction Change Directive, or order for a minor change in the Work. In accordance with Section 7.2.3, Contractor shall not perform any Work that constitutes a change in the Work without either a fully executed Change Order, a Construction Change Directive signed by the Owner, or an order for a minor change in the Work issued by the Architect with the Owner's written approval.

§ 7.2 Change Orders

- § 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:
 - .1 The change in the Work;
 - .2 The amount of the adjustment, if any, in the Contract Sum; and
 - .3 The extent of the adjustment, if any, in the Contract Time.
- § 7.2.2 The Change Order shall represent a complete accord and satisfaction and settlement of all claims relating to the Work relating to the Change Order including without limitation all direct and indirect costs associated including without limitation cumulative impacts, lost productivity and other claims for any increase in the Contract Time or the Contract Sum.
- § 7.2.3 The Contract Sum or Contract Time shall only be modified by a written Change Order under this section, by a Construction Change Directive under section 7.3 or by a written notice from the Owner under Section 9.7.2. No course of dealing, conduct between the parties, or any asserted implied acceptance of alterations or additions to the Work or any asserted enrichment or benefit conferred upon the Owner shall constitute the basis for any Claim for modification to the Contract Sum or Contract Time or any modification to any term of the Contract Documents.
- § 7.2.4 The Contractor shall provide a quote for Owner requested Change Orders within 14 calendar days of such request.

§ 7.3 Construction Change Directives

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

- § 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- § 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
 - .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
 - .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - .4 As provided in Section 7.3.4.
- § 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:
 - .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
 - .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
 - .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others:
 - .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
 - .5 Costs of supervision and field office personnel directly attributable to the change.
- § 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time or Contract Sum, the Contractor may make a Claim in accordance with applicable provisions of Article 15.
- § 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- § 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- § 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- § 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.
- § 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

Subject to Article 6.3.1.1 of the Agreement, the Architect may 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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect and written approval of the Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

- **§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- § 8.1.2 The date of commencement of the Work is the date established in the Agreement.
- § 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.
- § 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

- **§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- **§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.
- § 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 The Contractor, Subcontractor, suppliers, consultants, or any other entity working on behalf of the Contractor expressly agrees that in undertaking to complete Work within the Contract Time specified (as may be modified in accordance with the Agreement) and Contractor has made allowances for certain foreseeable hindrances and delays. If and to the extent the Contractor is delayed at any time in the commencement or progress of the Work which impacts the critical path schedule by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by unforeseeable labor disputes, fire, unusual and unanticipated delay in deliveries beyond the Contractor's control, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, acts of God, flood, fire, earthquake or explosion, war, invasion, hostilities, terrorism, or other civil unrest, unforeseeable adverse action by any governmental authority, or unforeseeable change in laws/regulations or other unforeseeable causes beyond the Contractor's control ("Force Majeure Event"); (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner may determine. The Owner and Contractor will negotiate any adjustment of the Contract Time for this delay, which may include a change to the Contract Sum except due to a Force Majeure Event. The extension of time shall be the sole remedy for the Contractor relative to a delay or disruption caused by a Force Majeure Event, and the Contractor hereby waives any and all claims for monetary damages arising out of or related to any such delay or disruption. Notwithstanding anything contained herein to the contrary, extensions of Contract Time will not be granted for delays to the extent (a) caused by the fault, negligence, errors or omissions of the Contractor, or its Subcontractors or suppliers; (b) could have been reasonably anticipated or mitigated by the Contractor; (c) could have been avoided or limited by the Contractor's timely notice of the delay; or (d) the delay does not impact the critical path schedule of the Work.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

- § 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.
- § 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

- § 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.
- § 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.
- § 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay or the payment is otherwise subject to withholding, back charge or offset permitted by the terms of the written agreement between Contractor and Subcontractor or supplier.
- § 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.
- § 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet in addition to the other documents identified in these General Conditions and the Agreement.

§ 9.4 Certificates for Payment

- § 9.4.1 The Architect will, within thirty (30) 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; or (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 of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; 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 as provided in Section 9.5.1.
- § 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

- § 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of
 - .1 defective Work not remedied;
 - .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
 - **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
 - 4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 - .5 damage to the Owner or a Separate Contractor;
 - reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
 - .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- § 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.
- § 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- § 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by

joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

- § 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.
- § 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- § 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.
- § 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.
- § 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.
- § 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.
- § 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.
- § 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

- § 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.
- § 9.7.2 In the event that the Owner is entitled to payment from or reimbursement by the Contractor pursuant to the Contract Documents, the Contractor shall make such payment promptly upon demand by the Owner. If the Contractor fails to promptly pay any amount then due to the Owner, the Owner may, in addition to any other rights or remedies that the Owner may have, offset such amount against the Contract Sum and elect to deduct that amount from any

Application for Payment or issue a written notice to the Contractor reducing the Contract Sum by the amount to which the Owner is entitled.

§ 9.8 Substantial Completion

- § 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. As used herein, the Owner's "intended use" of the Work includes Owner's ability to occupy and utilize all common areas and amenities for their intended purposes without unscheduled interruptions or interference. Under no circumstances shall the Work or any portion thereof be deemed to be substantially complete unless and until certificates of occupancy and completion governing the Project have been issued by all appropriate governmental authorities having jurisdiction over the Project thereby allowing the intended use of the Work, unless a delay in receiving the final certificate of occupancy is solely and directly caused by Owner or Architect's actions.
- § 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- § 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.
- § 9.8.3.1 The Architect will make up to two (2) inspections to determine Substantial Completion on any portion of the work subject to Owner's approval. If because of these inspections the Architect determines that the work is not substantially complete, either because of major items not completed or a significant amount of punch list items, successive inspections requested by the Contractor will be charged to the Contractor at the Architect's then current hourly rate. The Owner shall withhold such compensation from the Contractor and pay such amount to the Architect. The Contract Sum may be adjusted as provided in Section 9.7.2.
- § 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- § 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. subject to Owner's right to withhold up to 200% of the estimated value of incomplete Architect Punch List items at its sole discretion. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The Contractor shall complete the Architect Punch List within thirty (30) days of receipt of the list.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of

the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. As portions of the Project are completed and occupied, Contractor shall ensure that continuing construction activity will not unreasonably interfere with the use and occupancy of the completed portions thereof. Contractor will permit Owner or other contractors who may be stocking and/or installing the Owner's furniture, fixtures and equipment or performing other construction or operations on the Project access to the site so long as the construction or operations by other contractors does not unreasonably interfere with the performance of the Work under the Contract Documents.

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.1 The Architect will make up to two (2) inspections to determine Final Completion on any portion of the work. If because of these inspections the Architect determines that the work is not finally complete, successive inspections requested by the Contractor will be charged to the Contractor at the Architect's then current rate. The Owner shall withhold such compensation from the Contractor and pay such amount to the Architect. The Contract Sum shall be modified pursuant to Section 9.7.2.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to

certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

- § 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
 - .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
 - .2 failure of the Work to comply with the requirements of the Contract Documents;
 - .3 terms of special warranties required by the Contract Documents; or
 - .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.
- § 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee in writing submitted with the final Application for Payment as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

- § 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to
 - .1 employees on the Work and other persons who may be affected thereby;
 - .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
 - .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- § 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.
- § 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.
- § 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- § 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.
- § 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.
- § 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. When required by law or for the safety of the Work and existing structures, the Contractor

shall shore-up, brace, underpin, and protect foundations and other portions of existing structures which are in any way affected by the Work. The Contractor, before commencement of any part of the Work, shall give any notices required to be given to adjoining landowners or other parties.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. The Owner, in consultation with the Architect and Contractor will determine the proper course of action to address such condition. Following completion of the resolution addressing such condition, Work in the affected area(s) will resume at such time mutually agreed to by the parties in writing. Additionally, to the extent the delay has a material impact on the project schedule, the Owner and Contractor will work cooperatively to adjust the Contract Time and reasonable costs incurred by Contractor for shut down and start-up due to such delay. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials and shall not, nor shall it nor shall it permit any third party for whom they are responsible bring on, keep, store, use, release or dispose of any Hazardous or potentially Hazardous Material on, in or about the Project Site.

§ 10.3.2 Contractor shall not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Materials in, on, under, upon or affecting any of the Owner's property in violation of any applicable laws or regulation. Without limiting any other provisions of the Contract Documents, and except to the extent caused by the Owner, Contractor shall indemnify, defend and hold harmless the Indemnities from and against all liabilities, claims, losses, costs and expenses (specifically including, without limitation, attorneys', engineers', consultants' and experts' fees, costs and expenses) arising from (1) any breach of any representation or warranty made in this paragraph and/or (2) environmental conditions or noncompliance with any applicable laws or regulation that result, in the case of Contractor, from operations or the Work by Contractor or its agents, employees or Subcontractors. As used herein, the term "Hazardous Materials" shall mean (1) any hazardous or regulated substance, pollutant, contaminant, material, or waste as defined by any federal, state and local environmental laws, or regulations promulgated thereunder, including, but not limited to, Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.) ("Clean Water Act") the Resource Conservation & Recovery Act (42 U.S.C. §§ 6901 et seq.) ("RCRA"), Safe Drinking Water Act (42 U.S.C. §§ 300f-j-26 et seq.) (Toxic Substances Control Act (14 U.S.C. §§ 2601 et seq.) (Clean Air Act 42 U.S.C. §§ 7401 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001 et seq.) ("EPCRA"), the Atomic Energy Act, 42 U.S.C. Sections 2014, et seq., and the Michigan Natural Resources and Environmental Protection Act (MCL§ 324.101 et seq.) or any other similar federal, state or local law or administrative rule or regulation of similar effect, each as amended and as in effect and as adopted as of the date of execution of this Contract, or date of Work, whichever is more protective of the Owner, (2) any other pollutant, contaminant, hazardous substance, solid waste, hazardous material, radioactive substance, toxic substance, noxious substance, hazardous waste, particulate matter, airborne or otherwise, chemical waste, medical waste, crude oil or any fraction thereof, radioactive waste, petroleum or petroleum-derived substance or waste, asbestos, PCBs, radon gas, all forms of natural gas, or any hazardous or toxic constituent of any of the foregoing, whether such substance is in liquid, solid or gaseous form, or (3) any such substance the release discharge or spill of which requires activity to achieve compliance with applicable law. This paragraph shall survive the expiration or earlier termination of the Contract.

§ 10.3.3 The Owner shall not be responsible for any substances or Hazardous Materials which Contractor, its agents, employees or Subcontractors bring into the Project site, or Owner's property

§ 10.3.4 [Intentionally Omitted]

- § 10.3.5 [Intentionally Omitted]
- § 10.3.6 [Intentionally Omitted]

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

- § 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, and all its elected and appointed officials, employees and volunteers, boards, commissions, and/or authorities and board members, including employees and volunteers thereof, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.
- § 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.
- § 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.
- § 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. Workers' Compensation Insurance, Commercial General Liability Insurance, and Motor Vehicle Liability Insurance, as required by the Agreement, shall be endorsed to state the following: "It is understood and agreed Thirty (30) days, or ten (10) days for non-payment of premium, Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to: Purchasing Manager, City of Pontiac, 47450 Woodward Avenue, Pontiac, MI 48342."

§ 11.2 Owner's Insurance

- § 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.
- § 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or

maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Contractor waives all rights against (1) the Owner and any of Owner's or Contractor's subcontractors, sub-subcontractors, agents, and employees; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 [Intentionally Omitted]

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. The period for the correction of Work shall be extended by corrective Work performed by the Contractor but only as to the corrected Work. If and whenever a latent defect, that is, a defect which exists in the Work that was not and would not normally be revealed, discovered or located before the end of the correction period stated in this section, becomes apparent, Owner shall, as promptly as practical, notify the Contractor of the latent defect, the latent defect shall be deemed to have occurred within the correction period stated in this section, and the Contractor shall be responsible for the correction and/or payment of the costs to correct the latent defect as stated in this section, which costs shall solely be borne by the Contractor.

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

§ 12.2.2.3 Defective work corrected by the Contractor shall be warranted for an additional period of one (1) year from the date of the Owner's acceptance of the Contractor's corrections.

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.25 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be

sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effective whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

- § 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
- § 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

- § 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.
- § 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

- § 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.
- § 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.
- § 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

- § 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.
- § 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.
- § 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.6 Survival. All obligations, responsibilities, terms, conditions, provisions, and representations of the Contractor, which by their nature extend beyond the Contract Time or completion of the Work in the Agreement shall survive acceptance, final payment, completion, expiration, suspension or termination of the Agreement whether such survival is expressly stated or not, including without limitation (a) Section 2.2.4 of the A201-2017; (b) Section 3.5 of the A201-2017; (c) Section 3.6 of the General Conditions entitled "Taxes"; (e) Section 3.18 of the General Conditions entitled "Indemnification"; (f) Section 5.4 of the General Conditions entitled "Contingent Assignment of Subcontracts"; (g) Section 9.6.8 of the General Conditions; (h) Article 11 of the General Conditions and Section 14.3 of the Agreement both entitled "Insurance and Bonds"; (j) Section 12.2 of the General Conditions entitled "Correction of Work"; (j) Section 13.1 of the General Conditions entitled "Governing Law"; (k) Section 13.2 of the General Conditions entitled "Successor and Assigns"; (1) Article 14 of the General Conditions entitled "Termination or Suspension of the Contract"; (m) Article 15 of the General Conditions entitled "Claims and Disputes"; (n) Article 10 of the Agreement entitled "Accounting Records"; (o) Article 12 of the Agreement entitled "Dispute Resolution"; (p) Article 13 of the Agreement entitled "Termination or Suspension"; (q) Article 14 of the Agreement entitled "Miscellaneous Provisions"; (r) Article 15 of the Agreement entitled "Scope of the Agreement"; (s) all other indemnification obligations in the Agreement; and (t) all other provisions of this Agreement to the extent necessary to interpret and give legal effect to the foregoing surviving provisions.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

- § 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Sub-contractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:
 - .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
 - .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
 - .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
 - .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.
- § 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.
- § 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

- § 14.2.1 The Owner may terminate the Contract if the Contractor
 - .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
 - .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
 - .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- § 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
 - .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
 - .2 Accept assignment of subcontracts pursuant to Section 5.4; and
 - .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.
- § 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. In the event Owner is determined to have incorrectly terminated the Contractor for cause, such termination shall be deemed to have been a termination for convenience and shall be governed by the provisions of Section 14.4.
- **§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

§ 14.3 Suspension by the Owner for Convenience

- § 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.
- § 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent
 - .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
 - .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

- § 14.4.1 The Owner may, at any time, terminate all or any part of the Contract for the Owner's convenience and without cause.
- § 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall
 - .1 cease operations as directed by the Owner in the notice;
 - .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- § 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts as verified by Owner's audit minus any amounts owed by Contractor to Owner under the Agreement as full compensation under this Agreement.
- § 14.4.4 In no event shall Owner be liable to Contractor for unrealized profits on the terminated Work. Contractor's invoice for compensation in the event of termination must be supported by sufficient records and documentation to enable Owner to verify all amounts claimed by Contractor. Upon termination pursuant to this Section, Owner shall have no further obligation to Contractor with respect to the terminated portion(s) of the Work.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments in accordance with the Contract Documents.

§ 15.1.4.2 [Intentionally Omitted]

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Within twenty-one (21) days of asserting the Claim, the Contractor shall provide any and all supporting documentation of the Claim to the Owner, unless the Owner allows in writing additional time for the Contractor to submit additional or more accurate data in support of the Claim.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Within twenty-one (21) days of asserting the Claim, the Contractor shall provide an analysis using a properly implemented Time Impact Analysis, Window Analysis or legally sufficient equivalent demonstrating the effect of the Claim on the critical path of the overall Project. The analysis shall include, without limitation, an identification and quantification of the delay resulting from the Claim, the measures that are or have been taken to mitigate the effect of any Claim, any other proposal or possibility to reduce or eliminate the effect of the Claim. No adjustments to the Contract Time shall be permitted for any delay to the extent caused by the Contractor. The Contractor expressly agrees that delays to construction activities which do not affect the overall completion of the Work shall not entitle the Contractor to an adjustment of the Contract Time.

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14..

§ 15.2 Negotiation

(Paragraphs deleted)

§ 15.2.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7 shall be subject to negotiation pursuant to Section 15.2.

§ 15.2.2 Owner and Contractor shall designate a senior executive with authority to attempt to resolve all claims and disputes by negotiation. The designated senior executive shall promptly begin discussions in an effort to agree upon a resolution of the dispute within 30 days of referral of the dispute to them initiated by either party. Either party may elect to abandon negotiations. If a dispute cannot be resolved pursuant to the procedures outlined in this Section, the parties shall proceed with mediation.

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

(Paragraphs deleted)

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event,

mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

- § 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.
- § 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

- § 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.
- § 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.
- § 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- § 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

- § 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).
- § 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.
- § 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

EXHIBIT A

DRAFT AIA Document A133 - 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133TM_2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the « » day of « » in the year « » (the "Agreement")

(In words, indicate day, month, and year.)

for the following **PROJECT**:

(Name and address or location)

« » « »

THE OWNER:

(Name, legal status, and address)

« »« »

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

« »« » « »

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

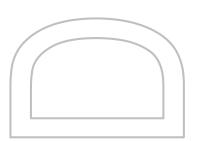
§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed « » (\$ « »), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories,

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.

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement. (Provide itemized statement below or reference an attachment.)

« »			
§ A.1.1.3 The Co	onstruction Manager's Fee is set forth	in Section 6.1.2 of the Agreemen	nt.
§ A.1.1.4 The mo	ethod of adjustment of the Construction	on Manager's Fee for changes in	the Work is set forth in Section
§ A.1.1.5 Alterna § A.1.1.5.1 Alter	tes nates, if any, included in the Guarante	eed Maximum Price:	
Item		Price	
execution of this	ect to the conditions noted below, the Exhibit A. Upon acceptance, the Owch alternate and the conditions that n	oner shall issue a Modification to	the Agreement.
Item		Price	Conditions for Acceptance
§ A.1.1.6 Unit pri (Identify the item	ices, if any: n and state the unit price and quantity	limitations, if any, to which the v	unit price will be applicable.)
Item		Units and Limitations	Price per Unit (\$0.00)
§ A.2.1 The date	DATE OF COMMENCEMENT AND S of commencement of the Work shall e following boxes.) The date of execution of this Amen Established as follows: (Insert a date or a means to determine	be: dment.	the Work.)
	« »		
If a date of community this Amendment	mencement of the Work is not selecte	d, then the date of commencemen	nt shall be the date of execution of
	therwise provided, the Contract Time cuments for Substantial Completion of of the Work.		
shall achieve Su	tial Completion t to adjustments of the Contract Time bstantial Completion of the entire Wo e following boxes and complete the n	ork:	uments, the Construction Manager
[« »]	Not later than « » (« ») calendar d	lays from the date of commencem	nent of the Work.

AIA Document Al33 - 2019 Exhibit A. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This draft was produced at 17:19:58 ET on 09/06/2023 under Order No.3104239003 which expires on 08/30/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

[« »] By the following date: « »

(913786484)

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

	Portion of Work	Subst	antial Completion	Date
	If the Construction Manag, if any, shall be assessed a			as provided in this Section A.2.3, liquidated ent.
		ON WHICH AMENDMEN Price and Contract Time		Amendment are based on the Contract
§ A.3.1.1	The following Supplementa	ary and other Conditions	of the Contract:	
1	Document	Title	Date	Pages
	The following Specifications the Specifications here,		ached to this Ame	ndment.)
« »				
;	Section	Title	Date	Pages
(Either li.	The following Drawings: sst the Drawings here, or re	efer to an exhibit attache	ed to this Amendm	ent.)
« »		=		
İ	Number	Title		Date
(If the Ov comprise Sustainal implement and responder	the Sustainability Plan by bility Plan identifies and do tation strategies selected i onsibilities associated with	ple Objective in the Own to title, date and number of escribes the Sustainable to achieve the Sustainab achieving the Sustainab each Sustainable Measu	of pages, and inclu Objective; the tar le Measures; the O le Measures; the S tre; and the Sustai	tify the document or documents that ude other identifying information. The rgeted Sustainable Measures; Owner's and Construction Manager's roles pecific details about design reviews, testing nability Documentation required for the
·	Title		Date	Pages
Other ide	entifying information:			
-	Allowances, if any, include each allowance.)	led in the Guaranteed Ma	aximum Price:	
I	ltem	Price		

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:

(Identify each assumption and clarification.) « » § A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information: (List any other documents or information here, or refer to an exhibit attached to this Amendment,) ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND **SUPPLIERS** § A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below: (List name, discipline, address, and other information.) « » This Amendment to the Agreement entered into as of the day and year first written above. **CONSTRUCTION MANAGER** (Signature) **OWNER** (Signature) « »« » (Printed name and title) (Printed name and title)

EXHIBIT B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 13 day of March in the year 2025 (In words, indicate day, month and year.)

for the following **PROJECT**:

(Name and location or address)

City of Pontiac Community Recreation Center 191 North Glenwood Avenue Pontiac, Michigan 48342

THE OWNER:

(Name, legal status, and address)

City of Pontiac Finance Department, Purchasing Division 47450 Woodward Ave Pontiac, MI 48342

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

A Joint Venture between Clark Construction Company, Inc. and White Construction Co., Inc. d/b/a Clark | White Joint Venture 3535 Moores River Drive Lansing, Michigan 48911

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201TM–2017, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

User Notes:

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ B.2.2 Liability Insurance

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

§ B.2.3 Required Property Insurance

- § B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.
- § B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss

Sub-Limit

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows: (Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

Sub-Limit

- § B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.
- § B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Optional Extended Property Insurance.

damage.

The Owner shall purchase and maintain the insurance selected and described below. (Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.) § B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance, to reimburse the [] Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss. [] § B.2.4.2 Ordinance or Law Insurance, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project. § B.2.4.3 Expediting Cost Insurance, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property. § B.2.4.4 Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess [] costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred. § B.2.4.5 Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

§ B.2.4.7 Soft Costs Insurance, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.4.6 Ingress/Egress Insurance, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

§ B.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. (Indicate applicable limits of coverage or other conditions in the fill point below.)

§ B.2.5.2 Other Insurance f 1

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

Coverage Limits

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner, and all its elected and appointed officials, employees and volunteers, boards, commissions, and/or authorities and board members, including employees and volunteers thereof, as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies. If any of the above Construction Manager's insurance coverages expire during the term of this Agreement, the Construction Manager shall deliver renewal certificates and/or policies to the City of Pontiac at least ten (10) days prior to the expiration date.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager. All deductibles and self- insured retentions applicable to any insurance required to be provided by the Construction Manager shall be the responsibility of the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, and all its elected and appointed officials, employees and volunteers, boards, commissions, and/or authorities and board members, including employees and volunteers thereof, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner, and all its elected and appointed officials, employees and volunteers, boards, commissions, and/or authorities and board members, including employees and volunteers thereof, as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Ten Million Dollars and 00/100 (\$10,000,000.00) each occurrence, Ten Million Dollars and 00/100 (\$10,000,000.00)) general aggregate, and Ten Million Dollars and 00/100 (\$10,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.2.3 Construction Manager's Commercial General Liability policy coverage shall also include the following extensions:

- a. Contractual Liability;
- b. Products and Completed Operations;
- c. Independent Contractors Coverage; and
- d. Broad Form General Liability Extensions or equivalent, if not already included.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, and hired vehicles by the Construction Manager, with policy limits of not less than One Million Dollars and 00/100 (\$1,000,000.00) 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.

§ B.3.2.4 The Construction Manager 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 such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower

coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

- § B.3.2.5 Workers' Compensation at statutory limits.
- **§ B.3.2.6** Employers' Liability with policy limits not less than One Million Dollars and 00/100 (\$1,000,000.00) each accident, One Million Dollars and 00/100 (\$1,000,000.00) each employee, and Two Million and 00/100 Dollars (\$2,000,000.00) policy limit.
- **§ B.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks
- **§ B.3.2.8** If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Five Million Dollars and 00/100 (\$5,000,000.00) per claim and Five Million and 00/100 Dollars (\$5,000,000.00) in the aggregate.
- § B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.
- **§ B.3.2.10** Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Five Million Dollars and 00/100 (\$5,000,000.00) per claim and Five Million and 00/100 Dollars (\$5,000,000.00) in the aggregate.
- **§ B.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.
- **§ B.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

than the expiration of the period for correction of Work, state the duration.)

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other

Construction Manager will maintain its General Liability and Umbrella Liability Insurance (for Products and Completed Operations coverage) policies in force for at least five (5) years following final completion of the Work and final payment hereunder.

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

§ B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the

property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

	Cove	rage Limits
[]	§ B.3.3.2.6 Other Insurance (List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)
[]	§ B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.
[]	§ B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.
]]	§ B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
[1	§ B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

§ B.3.4 Performance Bond, Payment Bond, and Warranty Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows: (Specify type and penal sum of bonds.)

Туре	Penal Sum (\$0.00)
Payment Bond	100% of GMP
Performance Bond	100% of GMP
Warranty Bond	100% of GMP

Pursuant to Act 213 of the Michigan Public Acts of 1963 (MCL §129.201 et seq.) (Hereinafter the "Act") the Construction Manager shall furnish satisfactory payment and performance bonds in accordance with the Act and shall name the Owner as an Obligee. Pursuant to MCL §129.202, the penal sum of the performance bond shall be in the amount of 100% of the Guaranteed Maximum Price, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and terms thereof. Pursuant to MCL §129.203, the penal sum of the payment bond shall be in the amount of 100% of the Guaranteed Maximum Price for the protection of the Obligee and the claimants, as defined in section 6 of the Act, supplying labor or materials, to the Construction Manager or its subcontractors in the prosecution of the Work provided for in this Agreement. All bonds provided shall be in a form acceptable to the Owner and shall be issued by a corporate surety acceptable to Owner. The Corporate surety shall be authorized to transact business in Michigan and listed in the current U.S. Department of Treasury Listing of Approved Sureties, Circular 570. All bonds signed by an agent must be accompanied with a certified copy of the agent's authority to act. If the surety on any bond so furnished is declared bankrupt or becomes insolvent or its right to do

business is terminated in Michigan or ceases to do meet the requirements of this subparagraph, the Construction Manager on the bond shall within 14 days thereafter substitute another bond or bond and surety, subject to the same qualifications as set forth herein.

Construction Manager shall also furnish a Warranty Bond on an AIA A313-2020 form. The Warranty Bond shall be in an amount at least equal to the Contract Price and shall remain in effect at least two (2) years after the date of Final Completion.

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

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

EXHIBIT C

Exhibit C- Federal Funding Requirements

All references to "contractor" in this section shall mean Construction Manager and its Subcontractors. The Construction Manager and its Subcontractors shall comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements to the extent they relate to the use of Federal funds for this project including but not limited to the following:

C.1 Equal Employment Opportunity. During the performance of this contract, the contractor agrees as follows:

- 1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- 4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

C.2 Clean Air Act

- 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 2. The contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

C.3 Federal Water Pollution Control Act

- 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- 2. The contractor agrees to report each violation to the Owner and understands and agrees that the Owner, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

C.4 Suspension and Debarment

- 1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).
- 2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 3. This certification is a material representation of fact relied upon by Owner. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

C.5 Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

C.6 EPA. In the performance of this contract, the contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: (i) Competitively within a timeframe providing for compliance with the contract performance schedule, (ii) Meeting contract performance requirements; or (iii) At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site: https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act

C.7 Contract Work Hours and Safety Standards Requirements

- Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.
- 3. Withholding for Unpaid Wages and Liquidated Damages. The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.
- 4. Subcontractors. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

C.8 Davis-Bacon Act Requirements

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as

provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis–Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or

mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits

listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
 - (b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
 - (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty

hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.
- (c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

C.9 Build America, Buy America Act

The Contractor acknowledges that it understands and agrees that the infrastructure materials it is providing or acquiring under this Agreement are supported with Federal funds subject to the Build America, Buy America Act (BABAA). See Section 70912, the Build America, Buy America Act, the "Infrastructure Investment and Jobs Act" (IIJA; P.L. 117-58). Under that provision, BABAA applies where Federal funding supports an infrastructure project as defined in Section 70912 of BABAA. BABAA requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States ("Build America, Buy America Requirements") including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants; (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit recovery as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether caused in whole or in part, from the Owner.

C.10 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms; 2 CFR § 200.321

The Contractor and its trade partners shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used, when possible, in accordance 2 CFR § 200.321.

C.11 Rights to Inventions Made Under a Contract or Agreement.

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

C.12 Procurement of recovered materials. 2 CFR § 200.323.

- (a) A recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

C.13 Prohibition on certain telecommunications and video surveillance equipment or services. 2 CFR § 200.216.

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain covered telecommunications equipment or services;
 - (2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.
- (b) As described in section 889 of Public Law 115-232, "covered telecommunications equipment or services" means any of the following:
 - (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
 - (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou

Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

- (3) Telecommunications or video surveillance services provided by such entities or using such equipment;
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country;
- (c) For the purposes of this section, "covered telecommunications equipment or services" also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (d) In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.
- (e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.
- (f) For additional information, see section 889 of Public Law 115-232 and § 200.471.

C.14 Domestic preferences for procurements. 2 CFR § 200.322

- (a) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.
- (b) For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
 - (c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

EXHIBIT D

Exhibit D

Racer Schematic Design and Report

- 1. <u>Civil Schematic Design dated July 20, 2024 (5 pages)</u>
- 2. <u>Landscape</u> Schematic Design dated September 19, 2024 (4 pages)
- 3. <u>Structural</u> Schematic Design- not dated (6 pages)
- 4. <u>Architectural</u> Revised Schematic Design dated October 8, 2024 (14 pages)
- 5. <u>Mechanical</u> Revised Schematic Design dated October 8, 2024 (11 pages)
- 6. <u>Electrical</u> Revised Schematic Design dated October 8, 2024 (3 pages)
- 7. Plumbing Schematic Design- not dated (2 pages)
- 8. <u>Technology</u> Revised Schematic Design dated October 8, 2024 (8 pages)
- 9. Foodservice Equipment Schematic Design dated October 4, 2024 (1 page)
- 10. Schematic Design Report Issued October 8, 2024 (100 pages)

EXHIBIT E

City of Pontiac New Center

Clark/White Staffing Plan

*We have included a 12 month duration per the RFP, but understand the deadline of obligation of funds by December 31, 2024 and will collaborate closely with the City of Pontiac and the Design Team to guarantee all milestones are acheived.

Staffing Analysis		May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	Mar-25	Apr-25	
		Concept Budget	Concept Budget	Schematic Design			Design Development				Construction Documents			
Hours Based on 173 Hr Month		1	2	3	4	5	6	7	8	9	10	11	12	Hours
Project Executive	%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	
Bobby Lalonde/Donovan White	Hrs	9	9	9	9	9	9	9	9	9	9	9	9	104
Project Director/SPM Market Leader	%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	
Chad Thelen	Hrs	9	9	9	9	9	9	9	9	9	9	9	9	104
Project Engineer	%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	
Ebony Reid	Hrs	9	9	9	9	9	9	9	9	9	9	9	9	104
Senior Estimator/Planner	%	10%	10%	40%	40%	20%	20%	20%	20%	15%	10%	5%	5%	
Traci Brower	Hrs	10	10	69	69	35	35	35	35	26	17	9	9	357
Senior Estimator	%	0%	0%	20%	20%	20%	10%	10%	10%	5%	5%	5%	5%	
Bud Provenzano	Hrs	0	0	35	35	35	17	17	17	9	9	9	9	190
VDC/Building Information Modeling Technician	%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	
Jeremy Barr	Hrs	9	9	9	9	9	9	9	9	9	9	9	9	104
Total Monthly Hou	s	45	45	138	138	104	87	87	87	69	61	52	52	963

City of Pontiac New Center

Clark/White Staffing Plan

			Construction																	
														Total						
Hours Based on 173 Hr Month		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	Hours
Project Executive	%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	
Bobby Lalonde/Donovan White	Hrs	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	In Fee
Project Director/SPM Market Leader	%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	
Chad Thelen	Hrs	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	In Fee
Project Manager	%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	
Jacob Pincura	Hrs	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	3114
Project Engineer	%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	
Ebony Reid	Hrs	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	3114
Superintendent 1	%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	
Claryton Swenson	Hrs	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	173	3114
Safety Manager	%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	
Josh Rothlein	Hrs	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	311
Purchasing/Accounting	%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	
Lori Fernette	Hrs	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	156
Total Monthly Hour	s	571	571	571	571	571	571	571	571	571	571	571	571	571	571	571	571	571	571	9809

EXHIBIT F



Cost Proposal: Submit the following information:

Fee for Preconstruction Services (AIA Document A133 – 2019, Article 3.1):

Provide a not to exceed amount.

Pre-Construction Service Personnel:

Provide a listing of the key personnel being proposed for this project, the estimated hours of involvement (for the duration of the services required for Preconstruction), and the proposed all in- inclusive billable hourly rate for each person that will be involved in the Preconstruction Services Scope of Work. Rates shall be in effect for the duration of the Project with no annual increases.

Name	Job Title	Hourly Rat	е	Hours	Rate * H	ours
Bobby Lalonde	Project Executive		In Fee	In Fee		In Fee
Donovan White	Project Executive		In Fee	In Fee		In Fee
Chad Thelen	Market Leader	\$	136.00	10	\$	1,360.00
Ebony Reid	Project Engineer	\$	68.00	20	\$	1,360.00
Traci Brower	Senior Estimator/Planner	\$	104.00	80	\$	8,320.00
Bud Provenzano	Senior Estimator/Planner	\$	104.00	80	\$	8,320.00
Jeremy Barr	VDC/BIM Technician	\$	83.00	20	\$	1,660.00
*This project is very impo	ortant the Clark/White team. We have	elected to comple	te all preconst	ruciton activies		
for total lump sum of \$21	.,200. We have attached a staffing plar	n to illustrate the a	ctual hours &	effort that we		
will provide for the City of	of Pontiac.				¢	21 020 00

<u>Staffing Plan-</u> Provide a staffing plan for the preconstruction phase. Include the number of hours per position per month for each month on the Project. Please see attached staffing plan.

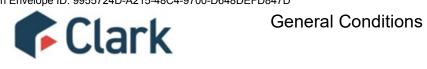
*We take no exceptions to the proposed CM contract nor do we suggest any modifications.

Construction Service Staffing Costs:

Provide a list of the key CM staff being proposed for this project, the estimated hours of involvement (for the duration of the services required for Construction), and the proposed all in-inclusive billable hourly rate for each person that will be involved in the CM's Construction Services Scope of Work. Rates shall be in effect for the duration of the Project with no annual increases.

Name	Job Title	Hourly Rate	Hours	Rate * Hours
Donovan White	Project Executive	In fee	In fee	In fee
Robert LaLonde	Project Executive	In fee	In fee	In fee
Chad Thelen	Senior Project Manager-ML	In fee	In fee	In fee
Jacob Pincura	On-site Project Manager	\$89.00	3114	\$277,146
Ebony Reid	On-site Project Manager	\$72.00	3114	\$224,208
Clayton Swenson	Site Superintendent	\$101.00	3114	\$314,514
Josh Rothlein	Safety Manager	\$88.00	311	\$27,368
Lori Fernette	Purchasing/Accounting	\$68.00	156	\$10,608
		\$853,844		

EXHIBIT G



OJECT VNER:	City of Pontiac New Center City of Pontiac											
CODE	WORK ITEM			RESPONS	BILITY		QTY	RATE	UNIT	TOTAL		
			CLA	ARK	SUB	OWN	`					
		FEE	REIM	ALW								
925	GENERAL CONDITIONS (SUBCONTRACTI	ED EQ	UIPMEN	T AND LABO	OR)							
927	LAYOUT/SURVEYING				X		0	\$0	EA.			
928	TESTING & INSPECTIONS				X							
	PRELIMINARY SOIL INVESTIGATION					X	0	\$0	EA.			
	SPECIAL INSPECTION					X	0	\$0	EA.			
	BACKGROUND TESTING					X	0	\$0	EA.			
	SPECIAL TESTING					X	0	\$0	EA.			
	CONCRETE TESTING					X	0	\$0	EA.			
	MASONRY TESTING					X	0	\$0	EA.			
	COMPACTION TESTING					X	0	\$0	EA.			
	BUILDING ENVELOPE TESTING					X	0	\$0	EA.			
	STRUCTURAL STEEL TESTING/INSPEC	TIONS	S			X	0	\$0	EA.			
	WARRANTY INSPECTIONS					X	0	\$0	EA.			
	AIR AND WATER BALANCING					X	0	\$0	EA.			
929	CLEAN UP				X							
	GENERAL CLEAN UP				X		0					
	FINAL CLEAN UP				X		0					
	TRASH CHUTE				X		0					
	WINDOW CLEANING				X		0					
	FIELD OFFICE JANITORIAL		X				18	\$100		\$1.		
930	FENCING & STAGING				X		0					
931	TEMPORARY PROTECTION				X		0					
	BARRICADES				X		0					
	SAFETY NETS				X		0		\$0 EA.			
	WEATHER PROTECTION				X		0					
	TEMPORARY ENCLOSURES				X		0					
	SECURITY GUARD				X		0					
	TEMPORARY HEATING SERVICE				X		0		WK			
932	TEMP. WALKS AND DRIVES				X		0		EA.			
	TEMPORARY STAIRS				X		0					
	COVERED WALKWAYS				X		0	\$0	LF			
1000	GENERAL CONDITIONS REPRODUCTIONS											
1000	BID PACKAGE DOCUMENTS		X				1	\$5,000	LS	\$5		
	AS-BUILT-PRINTING				X		0	. ,		40		
	REFERENCE MATERIALS				X		0					
	JOB SITE DUPLICATION				X		0					
	SHOP DRAWING PRINTING				X		0					
	MAINTENANCE MANUALS				X		0					
	OPERATION MANUALS				X		0					
1010	TEMP. TOILETS	ļ	1	I	71	1	•	Ψ0				
1010	TEMPORARY TOILETS - TRAILER		X				18	\$300	MO	\$5		
	TEMPORARY TOILETS - CONSTRUCTION	ON			X		0					
	TEMPORARY SEWER EXPENSE				X		0					
1020	TEMP WATER	ļ	1	I		1	•	Ψ0				
1020	DRINKING WATER		X				18	\$30	MO			
	TEMPORARY WATER EXPENSE				X		0					
1030	OFFICE TRAILER	ļ	1	I		1	•	Ψ0	1110			
1050	OFFICE TRAILER RENTAL		X				18	\$800	MO	\$14		
	OFFICE TRAILER RENTAL - Customer		- 21			X	0	*		Ψ1.		
	OFFICE TRAILER RENTAL - A/E					X	0					
	OFFICE TRAILER SET UP					21	1	\$4,000		\$4		
	STORAGE TRAILER RENTAL				X		0			Ψ.		
	TEMPORARY STAIRS - TRAILER				X		0					
1040	OFFICE EQUIPMENT	·	1	I .	1 21		J.	ΨΟ				
-0.0	PRINTER		X			Ι	18	\$100	MO	\$1		
	OFFICE EQUIP. RENTAL	 	X			† †	18	\$150		\$2		
1050	OFFICE EQUIP. RENTAL OFFICE SUPPLIES	 	X			+ +	18					
1060	COPY & FAX	X	Λ			+ +	0			i		
1070	IT SERVICES					+ +	0	φU	IVIO			
10/0	INTERNET SET UP AND SERVICE FEE	X				+ +	0	\$0	MO			
	TEXTURA		X			+ +	1	\$2,500	LS	\$2		
	SPECIALTY SOFTWARE - Touchplan	X	Λ			1	0	\$2,300	LO	\$2		
	51 LCIALI I 501 I WAKE - Touchplan	Λ	l		l	1	U	φυ				



General Conditions

CODE	WORK ITEM			RESPONS	IBILITY		QTY	RATE	UNIT	TOTAL
			CLA	.RK	SUB	OWN				
		FEE	REIM	ALW						
	SAFETY INCENTIVE PROGRAM			X			1	\$1,500		\$1,500
	HANDRAILS AND TOE BOARDS				X		0	\$0	LF	\$0
	SAFETY PROTECTION				X		0	\$0	MO	\$0
	FIRE EXTINGUISHERS				X		0	\$0	EA.	\$0
1100	TEMPORARY POWER SERVICE - TRAILER				X		0	\$0.00	EA.	\$0
1110	TELEPHONE				1		1	1		
	TELEPHONE EXPENSE MOBIL		X				18	\$180	MO	\$3,240
	TELEPHONE EXPENSE FIELD OFFICE	X					0	\$0	MO	\$(
1120	POSTAGE / DELIVERY SERVICE		X				18	\$20	MO	\$360
1140	FIRST AID SUPPLIES		X			<u> </u>	18	\$50	MO	\$900
2000	MILEAGE EXPENSE	X					0	\$0	LS	\$(
					1					
3000	DEBRIS HAULING / REMOVAL				X		0	\$0	LS	\$0
3010	SIGNAGE						0	\$0	EA.	\$0
	PROJECT SIGN				X		1	\$0	MO	\$0
	PROMOTIONAL SIGNAGE				X		0	\$0	MO	\$0
	TEMP DIRECTIONAL/TRAFFIC CONTR	OL SIG	ins		X		0	\$0	MO	\$0
3020	SNOW REMOVAL				X		0	\$0	MO	\$0
3030	BONDS									Ī
3050	PHOTOGRAPHS/JOBSITE PICTURES	ļ					0	\$0	MO	\$0
3060	TEMPORARY GAS SERVICE				X		0	\$0	MO	\$0
3070	POWER EXPENSE - BUILDING				X		0	\$0	MO	\$0
3080	MI SMALL TOOLS		X				18	\$25	MO	\$450
3090	PERMITS									\$0
	GRADING PERMIT				X		0	\$0	EA.	\$(
	PARKING LOT RENTAL				X		0	\$0	EA.	\$0
	EMPLOYEE PARKING FEES				X		0	\$0	EA.	\$0
	SIGN PERMITS				X		0	\$0	EA.	\$0
	SIDEWALK PERMITS				X		0	\$0	EA.	\$0
	LANDSCAPE PERMITS				X		0	\$0	EA.	\$0
	STREET / CURB DESIGN CHARGE				X		0	\$0	EA.	\$0
	GENERAL BUILDING PERMIT					X	0	\$0	EA.	\$0
	TRADE PERMITS				X		0	\$0	EA.	\$0
	PLAN REVIEW FEES					X	0	\$0	EA.	\$0
	WATER CONNECTION FEE					X	0	\$0	EA.	\$0
	SANITARY CONNECTION FEES					X	0	\$0	EA.	\$0
	STORM CONNECTION FEES					X	0	\$0	EA.	\$(
	GAS SERVICE FEE					X	0	\$8	LF	\$0
	POWER SERVICE FEE					X	0	\$0	EA.	\$0
	STEAM SERVICE FEE					X	0	\$0	EA.	\$0
	CHILLED WATER SERVICE CHARGE					X	0	\$0	EA.	\$0
	SPECIAL TAP FEES					X	0	\$0	EA.	\$(
	CONTRACTOR'S LICENSES				X		0	\$0	EA.	\$0
	ZONING FEES / CONSULTANTS					X	0	\$0	EA.	\$0
3100	MISC. EXPENSES									
	MISC. EXPENSES		1				18	\$100	EA.	\$1,800
	PROJECT TAXES				X		0	\$0	EA.	\$(
3110	PROMOTIONAL						0	\$0	MO	\$0
3120	EQUIPMENT RENTAL						·		<u> </u>	
	AUTOMOBILE AND FUEL	X					0	\$0	MO	\$0
	AIR COMPRESSOR AND FUEL				X		0	\$0	WK	\$0
	GENERATOR AND FUEL				X		0	\$0	WK	\$0
	EQUIPMENT RENTAL				X		0	\$0	WK	\$(
	TOWER CRANE				X		0	\$0	MO	\$0
	MAN HOIST & OPERATOR				X		0	\$0	WK	\$0
	ELEVATOR PROTECTION				X		0	\$0	EA.	\$0
	ELEVATOR OPERATOR				X		0	\$0	WK	\$(
	CRANE RENTAL				X		0	\$0	MO	\$(
	FORKLIFT RENTAL				X		0	\$0	MO	\$0
3130	LEGAL	X			1		0	\$0	EA.	\$0
					1		-			-
	TOTAL GENERAL CONDITI	ONC	FOD	CONSTD	ICTION					\$47,290
		CITO	TON	COLIDIA	CITON					Φ+1,42