

# **Documents For**

RFP Number 25-04

## **Waterford Township Community Center Construction Management Services**



Charter Township of Waterford

5200 Civic Center Drive

Waterford, MI 48329

[www.waterfordmi.gov](http://www.waterfordmi.gov)

March 2025

**CHARTER TOWNSHIP OF WATERFORD**  
**Oakland County, Michigan**

**ADVERTISEMENT FOR**

**RFP NO. 25-04**  
**WATERFORD TOWNSHIP**  
**COMMUNITY CENTER**  
**CONSTRUCTION MANAGEMENT SERVICES**

Sealed RFPs for the project entitled “**RFP NO. 25-04 WATERFORD TOWNSHIP COMMUNITY - CONSTRUCTION MANAGEMENT SERVICES**” for the Charter Township of Waterford will be received at the Clerk’s Office, 5200 Civic Center Dr., Waterford, Michigan 48329 on or before, but not later than 11:00 am, local time on March 21, 2025. All RFPs received will be publicly opened and read aloud at that time.

**All RFPs shall be delivered to the Waterford Township Clerk’s Office in sealed envelopes. The outside of the envelope containing the RFP shall bear the name of the Vendor, their address, license number if applicable, and the name of the project for which the RFP is submitted.**

The scope of this contract shall include all labor, materials, equipment, supplies, service and insurance by the Vendor to complete the RFP entitled: **RFP NO. 25-04 WATERFORD TOWNSHIP COMMUNITY - CONSTRUCTION MANAGEMENT SERVICES** in accordance with these entitled specifications.

RFP documents may be obtained through Michigan Intergovernmental Trade Network (MITN) at [www.bidnetdirect.com/mitn](http://www.bidnetdirect.com/mitn) or Waterford Township’s website [www.waterfordmi.gov](http://www.waterfordmi.gov) on or after March 5, 2025. A public viewing copy is available at the Waterford Township Clerk’s Office, 5200 Civic Center Dr., Waterford, MI 48329.

All proposals submitted may not be withdrawn and shall be irrevocable for a period of a minimum of ninety days (90) from the scheduled time for closing RFPs

The Township reserves the right: to accept any or all alternative RFPs; to award the Contract to other than the lowest vendor; to waive any irregularities of informalities, or both; to reject any or all RFPs; and in general to make the award of the Contract in any manner deemed by the Township, in its sole discretion, to be in the best interest of the Township. Conditional RFPs will not be considered.

WATERFORD TOWNSHIP, MICHIGAN  
BY ORDER OF:

Kim Markee, Township Clerk

**THIS ADVERTISEMENT, AS WELL AS SPECIFICATIONS, MAY ALSO BE ACCESSED ON THE  
WATERFORD TOWNSHIP WEBSITE AT [WWW.WATERFORDMI.GOV](http://WWW.WATERFORDMI.GOV)**

# Request for Proposal (RFP) – Construction Management Services

CLIENT: Waterford Township  
PROJECT: Waterford Township Community Center  
DATE: March 5, 2025

## SUBMISSION INFORMATION

PROJECT DESCRIPTION:	Renovations and additions to the existing Student Center and Physical Education Buildings including site and field modifications/improvements.
DESCRIPTION OF PROCUREMENT:	Construction Management Services
OWNER/CLIENT:	Waterford Township 5200 Civic Center Drive Waterford, Mi. 48329
LOCATION OF BID DOCUMENTS:	<a href="https://app.e-builder.net/public/publicLanding.aspx?QS=82a19db837a44a7fa4f034ab4933227a">https://app.e-builder.net/public/publicLanding.aspx?QS=82a19db837a44a7fa4f034ab4933227a</a>
MANDATORY PRE-PROPOSAL MEETING:	Wednesday, March 12, 2025, at 2:30pm EST <b>O.C.C. Highland Lakes Campus</b> Student Center Multipurpose Room 7350 Cooley Lake Road Waterford Township, MI 48327
CLARIFICATIONS TO OWNER'S REPRESENTATIVE:	Robert Stempien at <a href="mailto:robert.stempien@plantemoran.com">robert.stempien@plantemoran.com</a>
LAST DATE FOR CLARIFICATIONS:	Monday, March 17, 2025, at 11:00 am EST
PROPOSAL DUE DATE:	Friday, March 21, 2025, at 11:00 am EST
SUBMIT HARD COPY PROPOSAL TO:	Clerk's Office 5200 Civic Center Drive Waterford, MI 48329
SUBMIT ELECTRONIC PROPOSAL TO:	<a href="mailto:WaterfordCMProposals@docs.e-builder.net">WaterfordCMProposals@docs.e-builder.net</a> <b>*Email a PDF copy of your proposal up to 24 hours AFTER submitting hard copy proposal*</b>
BIDDER INTERVIEWS:	By invitation only Week of March 24, 2025

## PROPOSAL DETAILS

Waterford Township (hereafter referred to as “Owner”) has engaged Plante Moran Realpoint (hereafter referred to as “PMR” or “Owner’s Representative”) to provide owner’s representation services for this project. Your firm is invited to submit a proposal for the services required in this request for proposal (RFP). This RFP is being publicly advertised and includes minimum qualifications that must be met or exceeded. This RFP includes the following attachments:

- A. Project Scope
  - 1. Project Description
  - 2. Draft Master Schedule
  - 3. Existing Plans
  - 4. Concept Plans
- B. Contract Documents
  - 1. Standard Form of Agreement AIA A133-2019, as modified
  - 2. General Conditions AIA A201-2017, as modified
- C. Proposal Forms
  - 1. Proposal Form
  - 2. Cost Workbook
  - 3. Familial Disclosure Statement
  - 4. Iran Disclosure Statement
  - 5. Non-Collusive Affidavit
  - 6. Equal Opportunity Form
  - 7. Criminal Background Disclosure Affidavit

This RFP does not commit Owner to award a contract or to undertake any financial obligation whatsoever with respect to the requirement referred to herein. Owner reserves the right to reject any proposal with or without cause, to not award a contract, or to award one or more contracts. Owner further reserves the right to waive any irregularity or informality in this RFP process or any proposal. Owner reserves the right to accept or reject, without consideration, any proposal which arrives late. Owner reserves the right to request additional information from any or all firms. In addition, notice is hereby given of the possibility that award may be made without discussion of the proposal. In the event a firm’s proposal is accepted by Owner and the firm asserts exceptions, special considerations, or conditions after acceptance, Owner, in its sole and absolute

discretion, reserves the right to thereafter reject the proposal and award another firm. Therefore, the firms should submit their best proposal initially from both technical and cost standpoints.

## A. PRE-PROPOSAL

- a. DISCUSSION OF PROPOSAL— From the issue date of the RFP until a firm is selected and selection is announced, a prospective firm shall not communicate about the subject of the RFP or a firm's proposal with Owner, its board, or employees, except as permitted by the requests for clarifications paragraph. Your proposal and any modifications thereto shall be submitted only to the person(s) listed on the front page. Failure to comply strictly with Owner's instructions regarding the content and manner of submission of a proposal including, without limitation, disclosure of any information in the proposal or modifications thereof to any third party or other Owner's staff without the express, prior written approval of the Owner's Representative, shall result, at owner's sole discretion, in the immediate disqualification of the firm.
- b. RFP documents may be obtained at the e-Builder website created by PMR and noted on front page. Please contact Jessica Zanetti at 248-606-5103 or via email at [Jessica.zanetti@plantemoran.com](mailto:Jessica.zanetti@plantemoran.com) for e-Builder access instructions should you encounter any difficulties.

## B. ADDENDA

Any addendum to this RFP will be issued in writing by PMR on behalf of Owner. No information or representation other than that contained in such an addendum, whether received from an employee of Owner or other person, will be considered to have been modified or be grounds for deviation from any stipulation or requirement of this RFP.

## C. PROPOSAL FORMAT

Prepare and submit three (3) hard copies of your proposal package to the designee listed on the first page. Packages should be in 8.5" x 11" format. Additionally, email one PDF copy of your proposal AFTER submitting your hard copy proposal to the email address listed on the first page.

The following proposal format is required:

Cover Letter

Section 1 – Project Approach Narrative

Section 2 – Relevant Firm Experience

A. Specific Firm Experience

Section 3 – Project Organizational Chart and Team Resumes

Section 4 – Proposal Forms

A. Detailed Proposal Form

- B. Cost Workbook
- C. Familial Disclosure Statements
- D. Iran Disclosure Statement
- E. Non-Collusive Affidavit
- F. Equal Opportunity Form
- G. Criminal Background Disclosure Affidavit

Section 5 – Project Schedule

Section 6 – Clarifications and Exceptions

Section 7 – Additional Information

## SECTION 1 – PROJECT APPROACH NARRATIVE

- Submit a narrative detailing your approach, philosophy, unique expertise, and other information relevant to how you will meet project needs.

## SECTION 2 – RELEVANT FIRM EXPERIENCE

- Provide relevant project name, project description, project location, date completed, value of construction, client reference name and telephone number, and your role on the project.

## SECTION 3 - PROJECT ORGANIZATIONAL CHART AND TEAM RESUMES

- Attach a project organizational chart outlining your proposed team structure. The organization chart shall indicate the key personnel assigned to the project (if consultants are being used, please note the firm with which they are employed). If the firm has multiple offices, please identify at which office the key personnel assigned to the project are located.
- Include resumes for all individuals listed. Please highlight experience on similar projects and role that person played.
- If selected, your firm shall assign and guarantee that the proposed professionals shall work in their proposed capacity on the project. If unforeseen circumstances occur and substitution is necessary, your firm shall, within five (5) business days, propose one or more professionals who are at least equal in competency and relevant experience. The Owner shall have the opportunity to interview the proposed professionals and make the final determination for a substitute.

## SECTION 4 – PROPOSAL

- Utilize the proposal forms provided as attachments to this RFP. Editable electronic versions of these forms may be obtained at the location indicated on front page.
- Section 4A – Detailed Proposal Form

- Complete and attach the Detailed Proposal Form included with this RFP.
- Section 4B – Cost Workbook
  - Complete and attach the Cost Workbook Form included with this RFP.
- Section 4C – Familial Disclosure Statement
  - Complete and attach the Familial Disclosure Statement included with this RFP.
- Section 4D – Iran Disclosure Statement
  - Complete and attach the Iran Disclosure Statement included with this RFP.
- Section 4E – Non-Collusive Affidavit
  - Complete and attach the Non-Collusive Affidavit included with this RFP.
- Section 4F – Equal Opportunity Form
  - Complete and attach the Equal Opportunity Form included with this RFP.
- Section 4G – Criminal Background Disclosure Affidavit
  - Complete and attach the Criminal Background Disclosure Affidavit included with this RFP

## SECTION 5 – PROJECT IMPLEMENTATION SCHEDULE

- Provide an implementation schedule with adequate detail to reflect your firm's project approach with respect to the services outlined in the contract provided with this RFP.
- The implementation schedule should include, at a minimum, the milestones listed in the schedule attached to this RFP.

## SECTION 6 - CLARIFICATIONS AND EXCEPTIONS

- Please explain any clarifications, exceptions, or exclusions to this RFP (scope, schedule, fee, etc.)
- List any and all exceptions taken to the contract documents provided. For each exception, alternative language must be proposed. Owner reserves the right to reject any proposed alternative language.
- The prevalence of these exceptions will be considered in reviewing the proposal and in the final selection of the firm for the project. Proposals that do not acknowledge these agreements or do not provide specific alternative language may be rejected.

## SECTION 7 – ADDITIONAL INFORMATION

- Please include any additional relevant information.

### D. PROPOSAL SUBMISSION

Sealed proposals for the work described by the RFP package will be received as noted on the front page. Please mark the envelope of all proposals with “Waterford Township Community Center - Proposal for Construction Management Services” and include your firm’s name as well. Include the required digital copy in PDF format as well as any Excel documents specified. Please also follow the specific instructions related to electronic submission.

### E. RESPONSIVENESS

To be responsive, the proposal must set forth full, accurate, and complete information as required by this RFP and all attachments.

### F. MINIMUM QUALIFICATIONS

In addition to the other requirements of this RFP, the following minimum qualifications must be met by your firm in order to submit a proposal:

- Firm has been in business for at least the last ten (10) consecutive years.
- Firm is licensed to perform the required work in the State of Michigan.
- Firm is familiar with and has experience in the public sector, including having at least five (5) public sector clients in the last ten (10) years.
- Firm has completed renovation or addition projects of at least \$20,000,000 for at least five (5) public or private sector clients within the last ten (10) years.

### G. SELECTION PROCESS & CRITERIA

The selection of the successful firm by the Owner will be based on some, or all, of the following criteria (not in any particular order):

- Firm’s proposed team experience with similar projects
- Evidence of capabilities to perform all requirements reflected in the RFP
- Fee structure for all scopes of work
- Project schedule
- Client references and relevant experience
- Other criteria as determined by the Owner’s selection team



This project will require a team effort where collaboration and interaction are highly valued, as is the professionalism and contribution of all team members. To that end, the Owner will put as much emphasis on people and process as fees.

## **H. FORM OF AGREEMENT**

This is a request for proposal only. Proposals will be treated as offers to enter into contract with Owner. Owner and successful firm shall memorialize their contractual relationship and obligations using the form of contract attached to this RFP (“Contract”). The Contract contains many details regarding the services required under this RFP, as well as the terms and conditions under which the services shall be provided by the successful firm. The Contract should be reviewed carefully by each firm prior to submitting a proposal. Any exceptions to the terms and conditions contained in the Contract, or any other special considerations or conditions requested or required by the firm relative to this RFP or the form of Contract, shall be expressly and specifically enumerated by the firm and be submitted as part of its proposal, together with an explanation as to the reason such terms and conditions cannot be met by, or, in the firm’s opinion are not applicable to, the firm, provided however, that exceptions or special conditions of the firm will not be binding upon Owner unless those exceptions or special conditions are expressly accepted by Owner and incorporated into the final Contract. Following the selection of the successful firm, if any, by Owner, the Contract will be finalized by the parties. Owner may reject any exceptions or special conditions that are raised by the successful firm after the selection is made. The final Contract shall be subject to the review and approval by Owner’s legal counsel.

## **I. DATA CONFLICTS**

Where conflicts occur within this RFP, its contents, and addendum (including but not limited to the Standard Form of Agreement; general, supplemental, and other conditions; etc.) the more restrictive requirements shall govern — all in favor of the Owner.

## **J. UNSOLICITED TERMS AND CONDITIONS**

Proposals which take exception to Owner’s terms and conditions as a whole and substitute the firm’s standard terms and conditions may be rejected.

## **K. FEES/TAXES**

All proposals shall include all applicable taxes, including Social Security, unemployment, sales or use taxes, and any other taxes specifically levied on the work or on wages by local, city, state, or federal government, except real property taxes on the site. Proposals shall also include all premiums, assessments, and other like payments, charges, and costs incidental to the work covered by the contract documents.

## **L. PROPOSAL COSTS**

Any recipient of this RFP, or any firm who chooses to respond to this RFP, is responsible for any and all costs and liabilities incurred by it, or others acting on its behalf, in (1) preparing or submitting a proposal, (2) otherwise responding to this RFP, or (3) negotiating any Contract incidental to its proposal.

## **M. IRREVOCABILITY OF PROPOSALS**

All proposals submitted may not be withdrawn and shall be irrevocable for a minimum period of ninety (90) calendar days following the due date for receipt of proposals set forth on the front page.

## **N. AUTHORITY TO SIGN**

Proposals must be signed by an officer of the firm who is authorized to enter into binding agreements.

## **O. OPENING OF PROPOSALS**

All submitted proposals shall be publicly opened and dated at the Township Auditorium located at 5200 Civic Center Drive in Waterford. Any interested parties may attend. No immediate decision will be made.

## PROJECT DETAILS

PROJECT DESCRIPTION:	See attachment A1
INTENDED PROJECT DELIVERY METHOD:	Construction Manager at Risk
PROJECT LOCATION/SITE INFORMATION:	OCC Highland Lakes Campus 7350 Cooley Lake Road Waterford, Mi 48327
PROJECT BUDGETS:	Total Project: \$33,310,000  <b>Design-to budget: \$22,000,000 plus \$2,500,000</b> (includes High Oaks, Levison Hall and tunnel demolition and associated site/pad restoration)

# C.1 - Construction Management Services Proposal Form

BIDDER: \_\_\_\_\_

BIDDER'S ADDRESS: \_\_\_\_\_

BIDDER'S MAIN CONTACT FOR PROPOSAL: \_\_\_\_\_

MAIN CONTACT'S PHONE NUMBER: \_\_\_\_\_

MAIN CONTACT'S EMAIL ADDRESS: \_\_\_\_\_

All proposals submitted may not be withdrawn and shall be irrevocable for a minimum period as defined in this RFP.

## A. COST PROPOSAL

- a. Proposes to provide preconstruction and construction services for the construction project as follows:

- For preconstruction services, on an hourly basis at the rates stipulated, and not-to-exceed: \$
- For construction services, at a cost plus a fee basis:
  - Estimate for personnel cost is: \$
  - Estimate for construction reimbursables is: \$
  - Construction manager's overhead & profit (fee) is: % of the cost of the work

## B. ADDENDA

- a. This proposal includes information for the following addenda:

ADDENDA NO.	_____	DATED	_____
ADDENDA NO.	_____	DATED	_____
ADDENDA NO.	_____	DATED	_____
ADDENDA NO.	_____	DATED	_____

## C. CONTRACTUAL TERMS

- a. If selected as construction manager (GC/CM), I agree to the contractual terms as provided in the RFP as noted below:

- ☐ AIA A133-2019 CMc, as modified
- ☐ AIA A201-2017 General Conditions, as modified
- ☐ Exceptions to amended AIA A133-2019 CMc and A201 -2017\*

\*Attach SPECIFIC proposed alternate contract language in Section 6

I understand that the initial engagement is for preconstruction services only. The CM agrees to hold its fee firm through the establishment of the GMP. Owner reserves the right to negotiate with the selected CM at the end of the preconstruction phase for subsequent construction services or terminate the CM service and solicit proposals from other construction management firms for construction services. I have read and I understand the responsibilities required of the CM under the *Agreement between the Owner and Construction Manager* and *General Conditions of the Contract for Construction*, which are provided with the RFP. If selected, our firm will be able to fulfill the requirements.

## SIGNATURE

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

FIRM NAME:

\_\_\_\_\_

BY:

\_\_\_\_\_

Signature

\_\_\_\_\_

Position/Title

\_\_\_\_\_, being duly sworn, deposes and says that the information provided herein is complete so as not to be misleading.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

NOTARY PUBLIC:

\_\_\_\_\_

MY COMMISSION EXPIRES:

\_\_\_\_\_

### Proposal Checklist

- ☐ Bid Proposal Form (this document)
- ☐ Cost Workbook
- ☐ Familial Disclosure Statements
- ☐ Iran Disclosure Statement
- ☐ Non-Collusive Affidavit
- ☐ Equal Opportunity Form
- ☐ Criminal Background Disclosure Affidavit

# Familial Disclosure Affidavit

The undersigned, the owner or authorized officer of the below named firm (the "Firm"), pursuant to the familial disclosure requirement provided in the Waterford Township request for proposals for Construction Management services, hereby represents and warrants that, except as provided below, no familial relationships exist between the owner or any employee of the Firm, and any member of the Waterford Township Board of Trustees. A list of the Board of Trustees can be found on the Township's website.

## LIST OF ANY FAMILIAL RELATIONSHIPS

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## SIGNATURE

Dated this       day of       , 20       .

FIRM NAME:

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BY:

---

Signature

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Position/Title

\_\_\_\_\_, being duly sworn, deposes and says that the information provided herein is complete so as not to be misleading.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the county of \_\_\_\_\_ and the state of \_\_\_\_\_.

NOTARY PUBLIC:

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MY COMMISSION EXPIRES:

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# Iran Disclosure Affidavit

## AFFIDAVIT OF COMPLIANCE – IRAN ECONOMIC SANCTIONS ACT

MICHIGAN PUBLIC ACT NO. 517 OF 2012

The undersigned, the owner or authorized officer of the below named firm (the “Firm”), pursuant to the compliance certification requirement provided in the Waterford Township request for proposals for Construction Management services (the “RFP”), hereby certifies, represents, and warrants that the Firm (including its officers, directors, and employees) is not an “Iran linked business” within the meaning of the Iran Economic Sanctions Act, Michigan Public Act No. 517 of 2012 (the “Act”), and that in the event Firm is awarded a contract as a result of the aforementioned RFP, the Firm will not become an “Iran linked business” at any time during the course of performing the scope of work or any services under the contract.

The Firm further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than two hundred fifty thousand dollars (\$250,000.00) or two (2) times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of Waterford Township’s investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a request for proposal for three (3) years from the date it is determined that the person has submitted the false certification.

### SIGNATURE

Dated this            day of            , 20            .

FIRM NAME: \_\_\_\_\_

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Position/Title

\_\_\_\_\_, being duly sworn, deposes and says that the information provided herein is complete so as not to be misleading.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the county of \_\_\_\_\_ and the state of \_\_\_\_\_.

NOTARY PUBLIC:

\_\_\_\_\_

MY COMMISSION EXPIRES:

\_\_\_\_\_

# Non-Collusive Affidavit

\_\_\_\_\_, being duly sworn, deposes and says that:

1. The proposal has been arrived at by the firm independently and has been submitted without collusion with, and without any agreement, understanding, or planned common course of action with, any other vendor of materials, supplies, equipment, or services described in the request for proposals, designed to limit independent bidding or competition; and,
2. The contents of the proposal have not been communicated by the firm or its employees or agents to any person not an employee or agent of the firm or its surety on any bond furnished with the proposal and will not be communicated to any such person prior to the official opening of the proposal.

\_\_\_\_\_  
Signature of Firm

STATE OF \_\_\_\_\_)  
\_\_\_\_\_)ss.  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by

\_\_\_\_\_.

\_\_\_\_\_, Notary Public

\_\_\_\_\_ County, \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Acting in the County of: \_\_\_\_\_

## Equal Opportunity Form

It is the publicly stated policy of \_\_\_\_\_ not to discriminate against any employee, applicant for employment, contractor, or material supplier, because of race, religion, national origin, ancestry, or sex. With regard to employment, such non-discrimination includes, but is not limited to, our (my) policies of recruitment, recruitment advertising, selection for apprenticeships or other training, rates of pay, promotion, transfer, lay-off, or termination.

In all advertising for employment, subcontractors, or suppliers we (I) shall state all applicants or respondents will receive consideration without regard to race, religion, color, national origin, ancestry, or sex.

We (I) understand that if a contract is executed with Waterford Township, we shall be required to maintain the above-mentioned non-discrimination policy during the term of the contract.

We (I) understand that we (I) may be required to submit further information covering the race, color, and work classification for our employees and those of subcontractors to be employed on this project.

### SIGNATURE

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

FIRM NAME:

\_\_\_\_\_

BY:

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position/Title

# Criminal Background Affidavit

The undersigned, the owner or authorized officer of the below-named firm (the “Firm”), pursuant to the criminal background compliance certification requirements of Waterford Township hereby represents and warrants that the Firm has performed and/or will perform sufficient criminal background checks, including at a minimum, an Internet Criminal History Tool (“ICHAT”) (or equivalent for non-Michigan residents) for all of its owners, employees, agents, representatives, contractors, and/or other personnel who will be on any Waterford Township premises to carry out the services contemplated by the contract documents. The Firm further hereby certifies that no owner, employee, agent, representative, contractor, and/or other personnel of the Firm will be on any Waterford Township premises if they are a registered criminal sexual offender under the Sex Offenders Registration Act, Public Act 295 of 1994, or have been convicted of “Listed Offense” as defined under Section 722 of the Sex Offenders Registration Act, MCL 28.722.

The Firm further acknowledges that if it is found to have submitted a false certification or otherwise fails to comply with the requirements of this certification, Waterford Township may immediately terminate the contract.

## SIGNATURE

Dated this            day of            , 20            .

FIRM NAME:

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BY:

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Signature

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Position/Title

\_\_\_\_\_, being duly sworn, deposes and says that the information provided herein is complete so as not to be misleading.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in the county of \_\_\_\_\_ and the state of \_\_\_\_\_.

NOTARY PUBLIC:

\_\_\_\_\_

MY COMMISSION EXPIRES:

\_\_\_\_\_

## **Waterford Township's Community Center Project Description**

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Plante Moran Realpoint was engaged in September 2023 to investigate the feasibility of repurposing a portion of Oakland County College's (O.C.C.) Highland Lakes campus into Waterford Townships (WT) new Community Center location.

During the discovery phase of the feasibility study, space program needs were identified by WT staff based on a proposed Community Center building design developed in 2018 and WT community surveys. These needs were used as a "test fit" for the existing O.C.C. Student Center and Physical Education Buildings.

The existing 24,471 s.f. two story Student Center and adjacent single story 35,098 s.f. Physical Education Building were evaluated for housing the desired WT programs and support spaces. The proposed site amenities from the former proposed 2018 plan were documented and part of the proposed O.C.C. Community Center plan development along with additional program items such as parking area(s) adjacent to both buildings and a dog park. WT is seeking to develop 51 acres of the 155-acre O.C.C. campus.

Both the Student Center and the Physical Education Building main utilities are serviced from the O.C.C. campus's Central Plant building. The Student Center is serviced by a hot water heating and chilled water cooling (hydronic) system via an underground tunnel system from the Central Plant building main boilers and chiller. The Physical Education Building has a hot water heating system only with no air conditioning. The intent is to design a standalone, independent HVAC system for each building as part of this project. The gas, water and electrical will need to be located and evaluated to accommodate the stand-alone building operation.

The Student Center Building was built in 1972. It has a mechanical room on the north end of the building that accommodates the tunnel fed hot water hydronic pumps, domestic hot water and main electrical switch gear. This room may need to be expanded to accommodate existing and new mechanical equipment. A penthouse rooftop mechanical room houses (2) air handling units (installed in 2009) for conditioned air distribution. Several ceiling variable air volume (VAV) with reheat are located mostly in the classroom spaces and corridors. The main entries and stairwells are serviced by in-wall cabinet unit ventilators. The building does not have a fire sprinkler system. There is a newer 2 stop elevator (7 to 8 years old), and a Simplex fire alarm system. There are restrooms located on the first and second level but do not meet current ADA code requirements for accessibility. The second level 4-ply built up roof appears to be in good condition but is currently 32 years old and should be replaced. The lower single-story roofs at the receiving, kitchen and former early childcare areas are EDPM fully adhered rubber roofing system installed in 2008. The exterior brick is in good condition and windows are original with the exception of the two-story gathering space/dining room windows which were replaced in 2009.

The 35,098 s.f. Physical Education building was built in 1977. The building contains an entry lobby, multi court gym, men's and women's locker rooms, weight room, racquetball courts, support offices and a mechanical room located at the southwest corner of the building.

Waterford Township will provide an environmental survey for each building once the scope of work is validated. A Phase 1 & Phase 2 report has been conducted by G2 Consultants and will be available to the selected A/E and CM team.

Within the proposed 51-acre site, there are (2) academic buildings and associated tunnels that will be removed: the 34,432 s.f. High Oaks Hall and the 85,457 sf. Levison Science Hall. Levison Hall will remain in operation by O.C.C. until the end of the academic school year in 2026.

On November 5, 2024, the registered Waterford Township voters approved a \$36M General Obligation Bond to purchase 51 acres of the OCC campus and make building and site improvements to support WT's Community Center programs.

**Proposed Building Program:**

Based on the 2023 Parks and Recreation 5-year master plan survey results & previous 2018 new recreation center design, the residents and WT staff provided their desire for certain community center program components. As a result of this feedback, the following recreational items received favorable responses:

- Gymnasium
- Locker/Shower
- Child Watch
- Exercise Room
- Conference/Party Rooms
- Parks & Recreation Administration Offices
- Activity Rooms
- Multipurpose Rooms
- Pottery/Kiln Room
- Cooking Kitchen Classroom
- Meals on Wheels Kitchen and Prep Area
- Teen/Gaming Room

The engagement will require civil/survey expertise to document existing site conditions. This may require the following scope of work related to the programmed outdoor recreation facilities:

- 51 acre lot boundaries
- Site topography
- Existing parking lots/drives
- Identification of existing above and below ground utilities and detention systems
- Documenting locations of existing buildings/structures
- Major tree locations in the area of work
- Site encumbrances/easements

The engagement will require athletic/outdoor recreation expertise to help design and develop the Community Center programmed spaces. Some of the potential programmed spaces are listed below:

**Outdoor Recreation:**

- Pickleball Courts
- Tennis Courts
- Shuffleboard Courts
- Table Tennis Tables
- Bocce Courts
- Playground



- Outdoor Restrooms
- Softball Field
- Athletic Fields
- Amphitheater
- Walking Track
- Dog Park

The engagement will require security/technology expertise to help design the Community Center project. One of Waterford Township's primary goals has been to provide safe yet welcoming environment for the community members they serve. New enhancements for the proposed buildings and site may include the following:

**Security Cameras** –The desire is to install a camera system that will monitor/cover public spaces related to the existing Student Center and Physical Education Buildings. Parking lot areas and outdoor gathering spaces/athletic fields should also be monitored. The security cameras will need the ability to be viewed by each building lobby desk monitor, main office area monitors and be accessible remotely. The monitoring of areas will have a hard drive back up of recordings – time duration for recordings TBD. The main building entry lobbies should also have a front desk panic button tied to the Waterford Township first responders.

**Door Card Access** - At a minimum, all exterior doors will have hard wired door access controls as well as public accessible rooms. The selected Architect work with the Township to identify doors which will require door access controls.

**Technology/Sound/Data** – The Waterford Township Community Center Project will require cabling and equipment that will service the program spaces and office areas. The following are potential items that will need to be designed, specified and coordinated with construction documents for this project:

- Provide and install complete Wi-fi coverage for all recreation spaces.
- Provide and install a PA system for select community center spaces. Provide the ability to control which rooms can receive announcements.
- Provide phone system design to meet the needs of Waterford Township community center department offices and select areas.
- Provide and install a sound system for gymnasium, group fitness rooms and select building areas
- Provide and install gymnasium score board cabling.
- Provide and install a schedule monitor and scheduling software for the main entry lobbies and select building locations.
- Provide and install meeting room and office conference room A/V monitors.
- Provide and install staff IT equipment and infrastructure
- Provide input on MDF room locations and design requirements.

# DRAFT - WATERFORD COMMUNITY CENTER MASTER SCHEDULE

2/17/2025

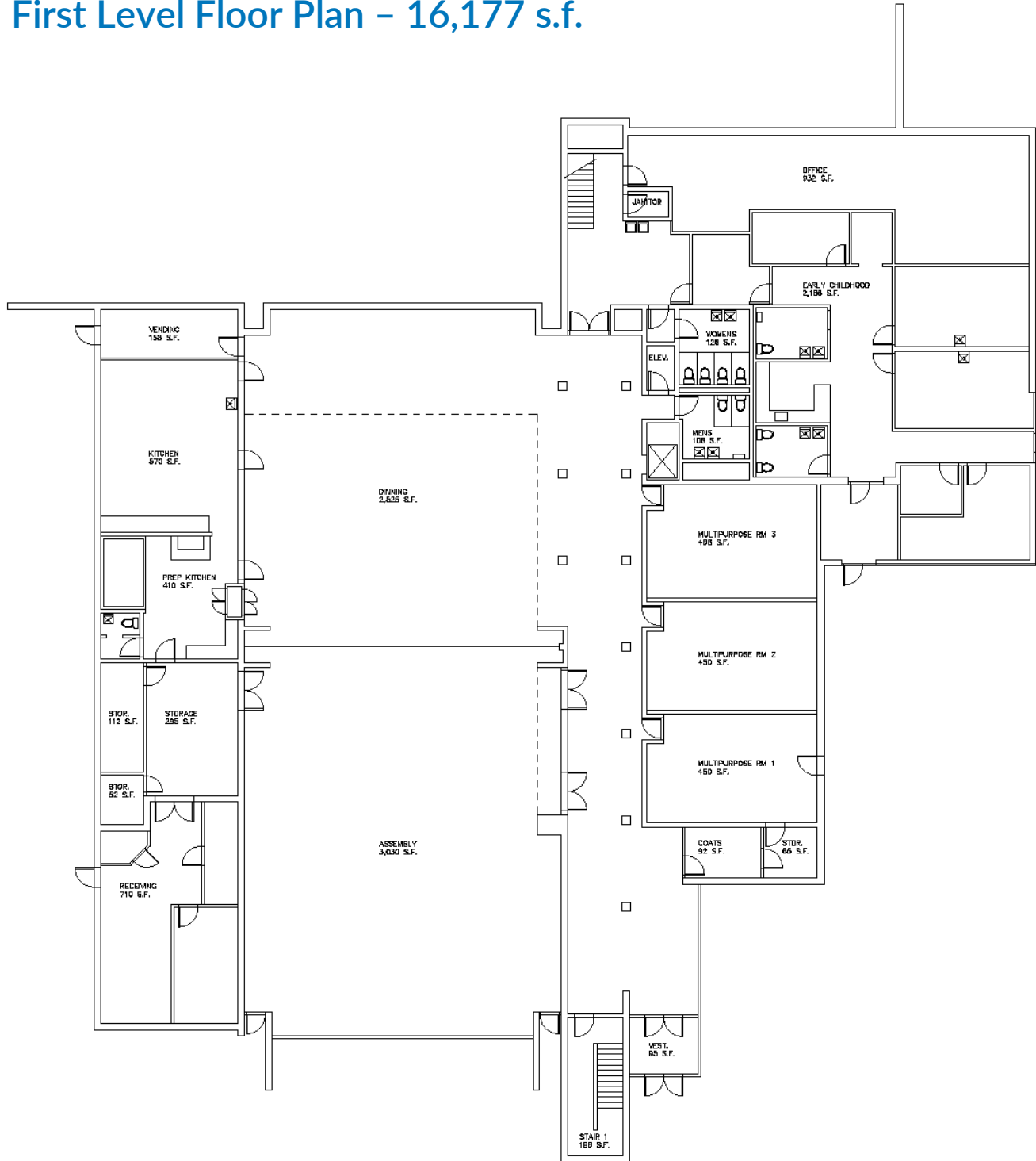
	Schedule Item	Dates	Duration
2025	Waterford Trustee Approval - PMR Engagement	January 27	
	Establish Draft Project Budget	January /February	4 weeks
	Develop Draft Project Governance	January/February	4 weeks
	Review Governance & Draft RFP's for A/E & CM	February 26	
	A/E Procurement - RFP/Contract, Interviews, Recommendation	February/March	2 months
	CM Procurement - RFP/Contract, Interviews, Recommendation	February/March	2 months
	Waterford Trustee Approval - A/E Engagement Recommendation	April 14	
	Waterford Trustee Approval - CM Engagement Recommendation	April 14	
	Waterford Trustee Approval - Project Governance	April 14	
	A/E Program validation	Mid April/Mid May	4 weeks
	CM Budget validation	Mid April/Mid May	4 weeks
	Other consultant engagements - Environ, Geo Tech.	April/May	2 months
	A/E Schematic Design	Mid May/Mid July	2 months
	CM Schematic Estimate	Mid May/Mid July	2 months
	Waterford Trustee Approval - SD presentation & estimate	July 28	
	Waterford Trustee Approval to proceed to Design Development	July 28	
	A/E Design Development	Aug/Sept/Mid Oct	2.5 months
	CM Design Development Estimate	End of October	2 weeks
	Waterford Trustee Design Development Presentation & Estimate	November 10	
	Waterford Trustee decision to proceed to Construction Documents	November 10	
2026	A/E Construction Document development	Mid November/End of February	3.5 months
	CM 95% Construction Document Estimate	February	2 weeks
	Bid & post award interviews, recommendation	March/April	2 months
	GMP recommendation for Board packet	End of April	
	Waterford Trustee Approval of GMP	May 11	
	Post GMP sub contractor contract execution	Mid May/Mid June	1 month
2026-2027	Mobilization, site preparation	Mid June 2026	
	Construction	Mid June 2026/November 2027	17.5 months
	Commissioning and close out	November 2027/January 2028	3 months
	Note: Waterford Trustee meeting dates are tentative.		

## O.C.C. Highland Lakes Campus Site



# Student Center Building

First Level Floor Plan – 16,177 s.f.



1  
A1

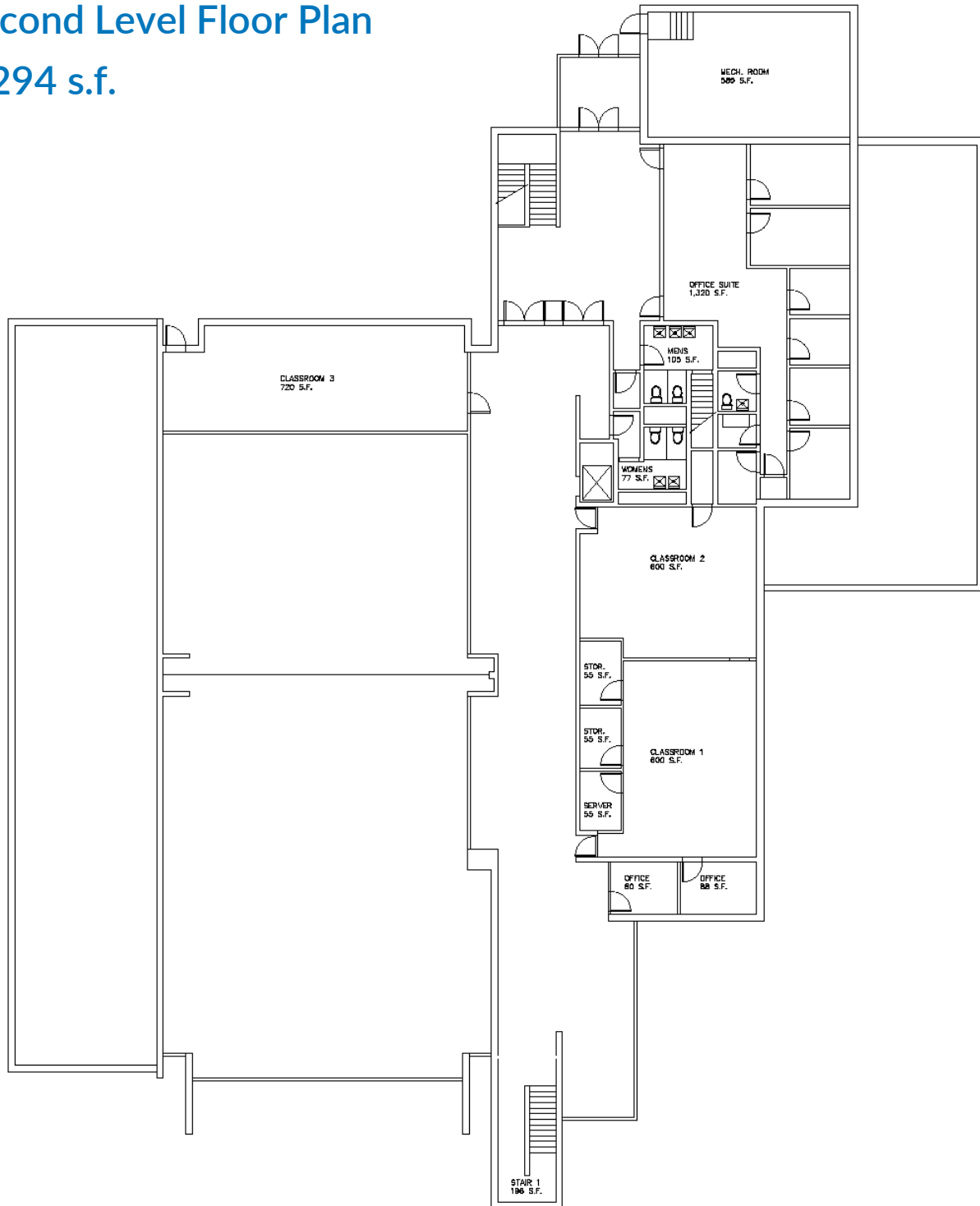
FIRST LEVEL PLAN

16,177 S.F.

# Student Center Building

## Second Level Floor Plan

8,294 s.f.



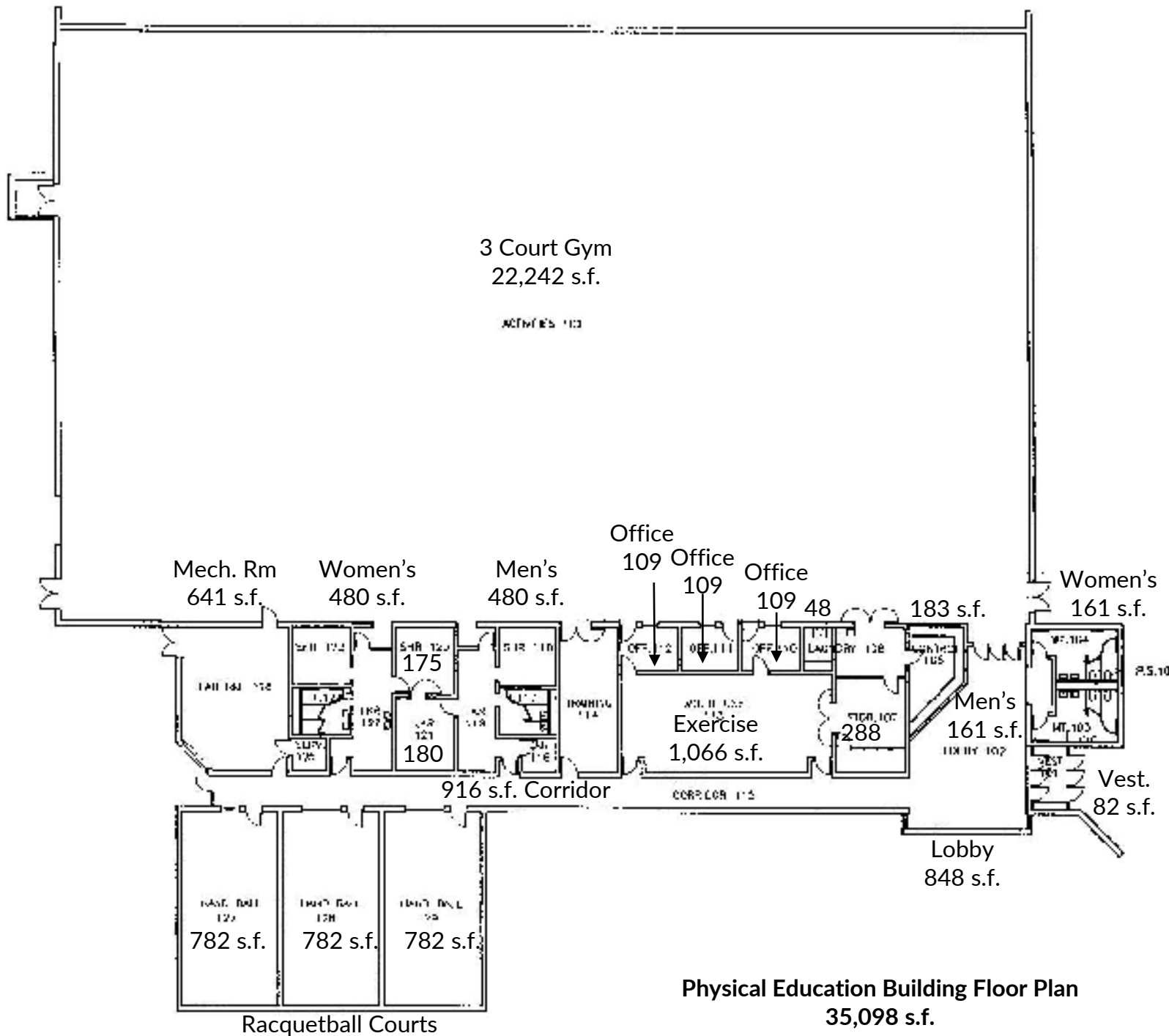
2  
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SECOND LEVEL PLAN

8,294 S.F.

# Physical Education Building

First Level Floor Plan – 35,098 s.f.

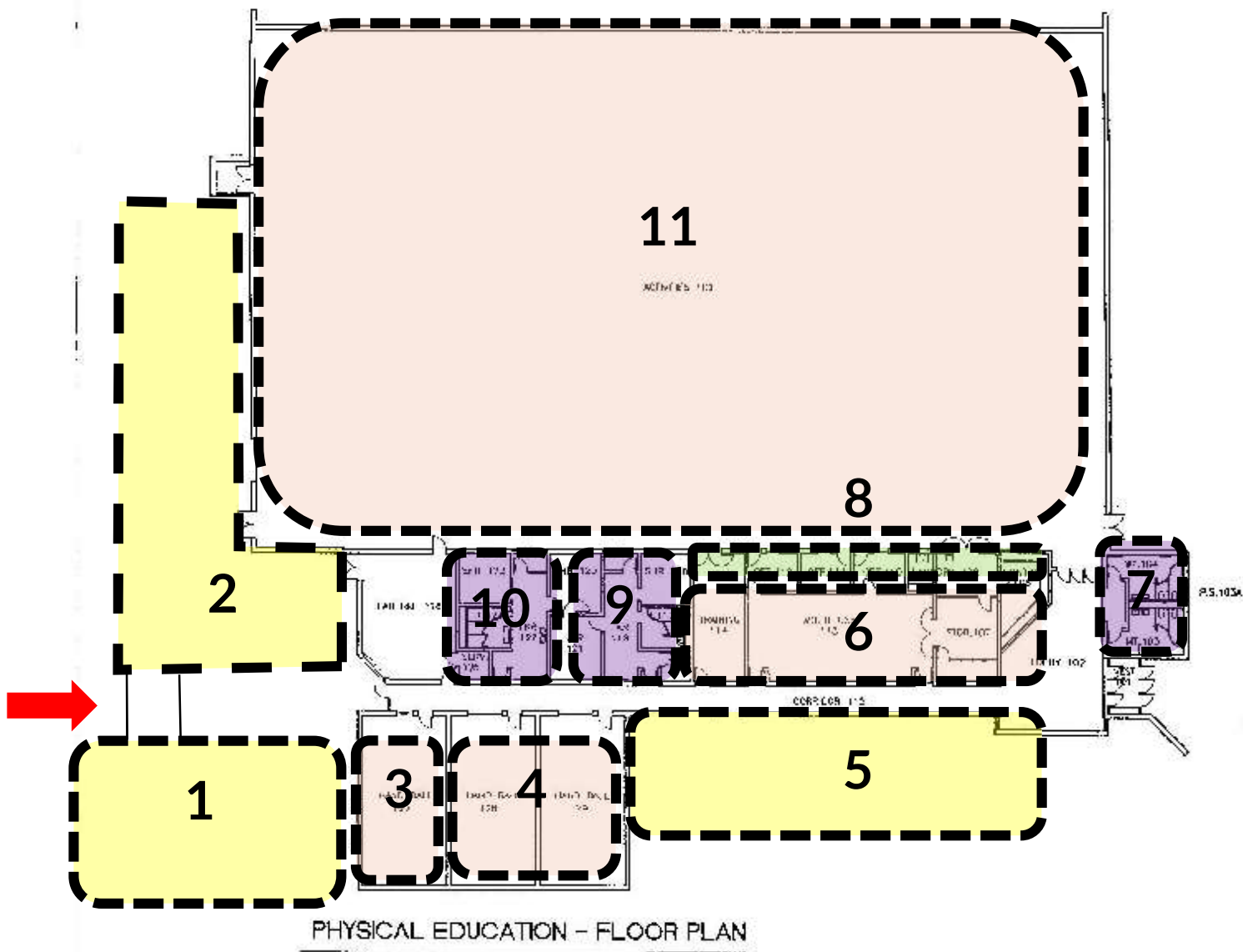




## Physical Education Building

### First Level Concept Floor Plan

Area	Color	Description
1	Yellow	New Entry/Admin
2	Yellow	New Mech./Storage
3	Light Orange	Child Watch
4	Light Orange	Dance Studio
5	Yellow	Exercise Equipt. Rm.
6	Light Orange	Free Weights
7	Purple	Restrooms
8	Light Green	Office/Support Room
9	Purple	Womens Locker Rm.
10	Purple	Mens Locker Rm.
11	Light Orange	Gym



## Proposed Concept Site Plan



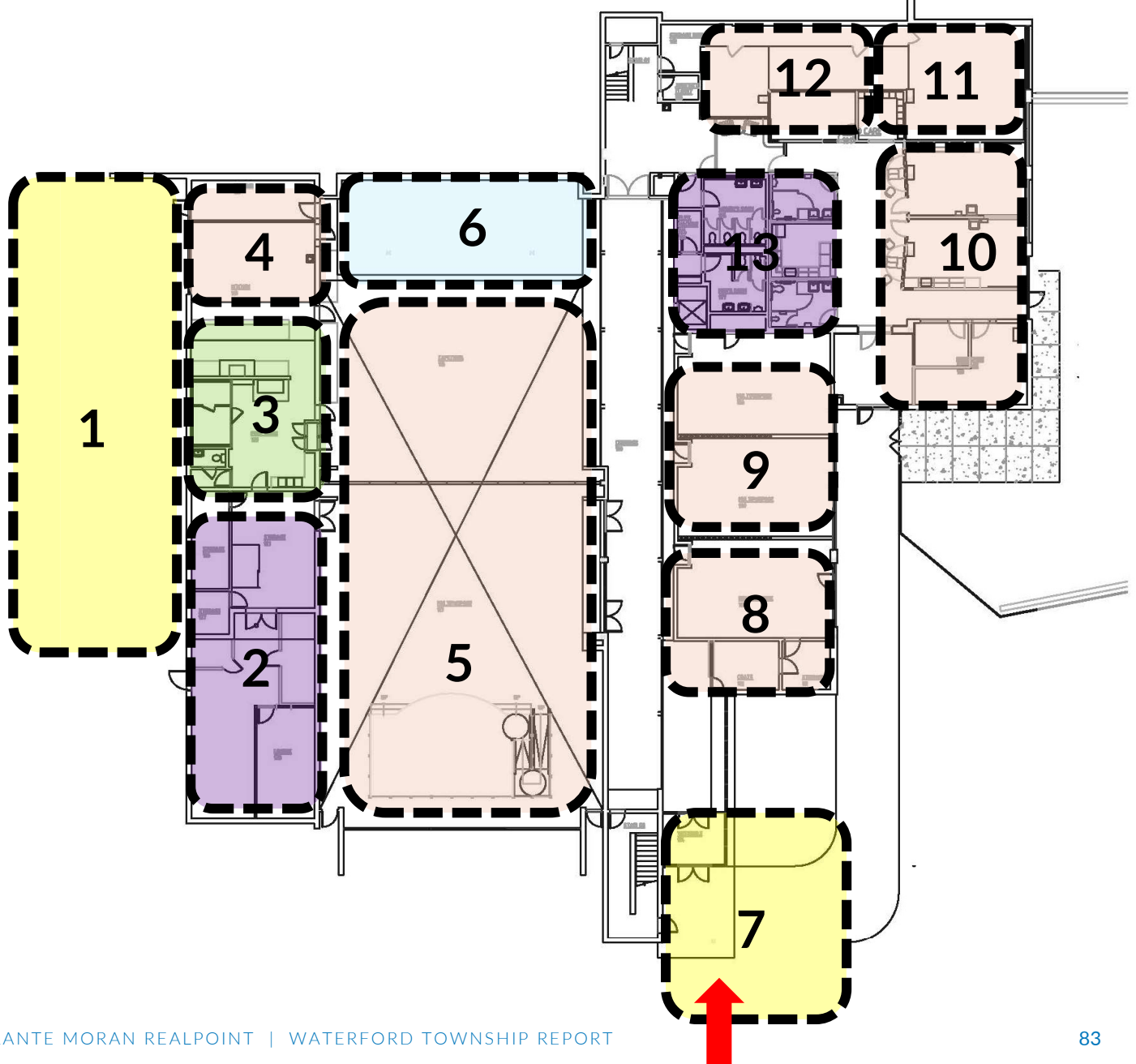


# Proposed Community Center Concepts

## Student Center Building







### First Level Concept Floor Plan

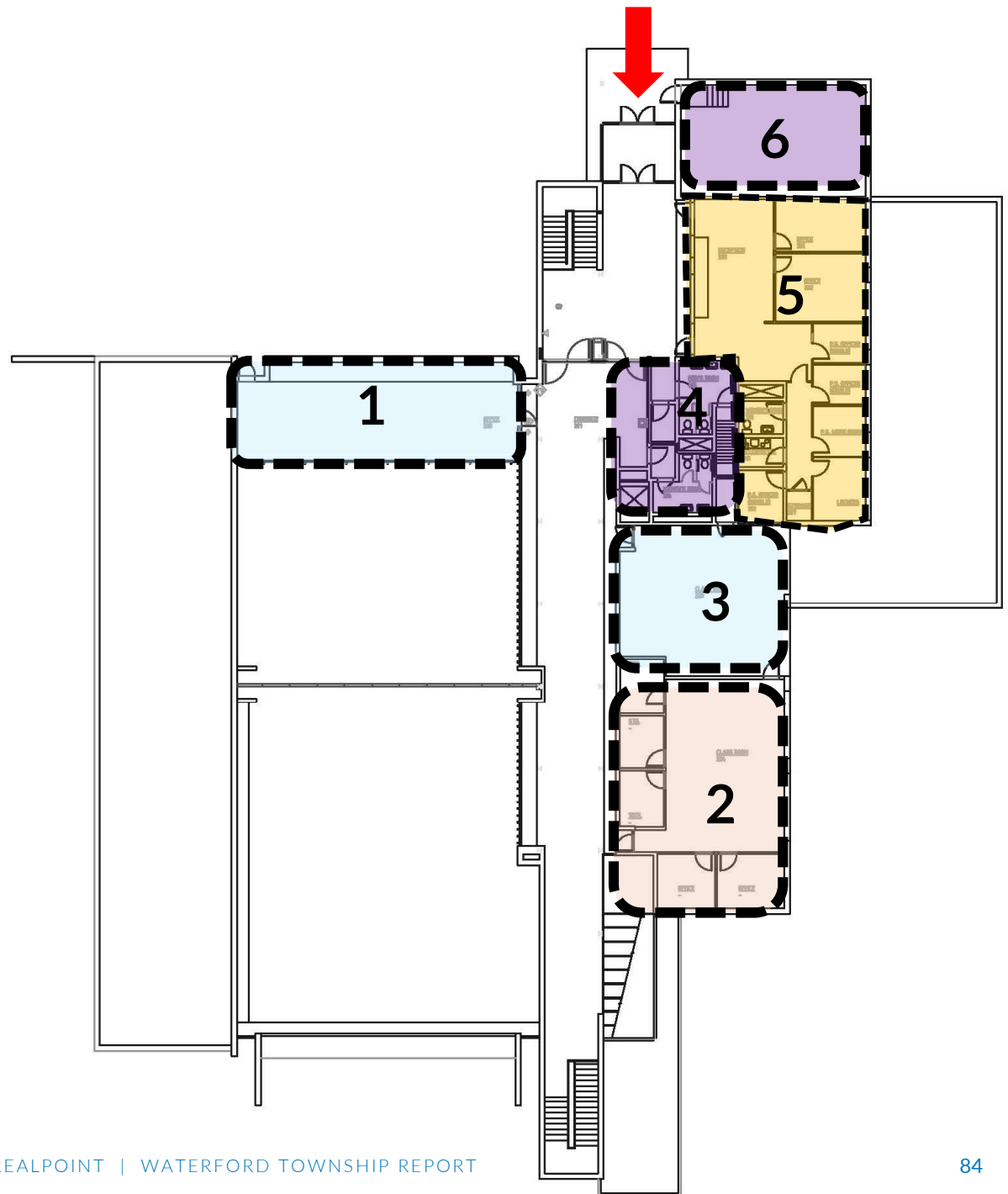
Area	Color	Description
1	Yellow	Work Shop/Meal Prep
2	Purple	Receiving/Storage
3	Green	Kitchen
4	Orange	Cooking Classroom
5	Orange	Social Hall
6	Light Blue	Multipurpose Room
7	Yellow	New Entry & Admin.
8	Orange	Activity Room
9	Orange	Activity Room
10	Orange	Art Room
11	Orange	Activity Room
12	Orange	Computer Room
13	Purple	Restrooms/Elev.



## Student Center Building

### Second Level Concept Floor Plan

Area	Color	Description
1		Multipurpose Room
2		Computer Room
3		Multipurpose Room
4		Restrooms/Elev.
5		Parks & Rec Offices
6		Mechanical Room



# DRAFT AIA® Document A133® – 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

**AGREEMENT** made as of the « » day of « » in the year «Two Thousand Twenty-Five.»  
(In words, indicate day, month, and year.)

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

«Waterford Township »« »  
5200 Civic Center Drive  
Waterford, Michigan 48329

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

« »« »  
« »  
« »  
« »

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

The Charter Township of Waterford  
Renovations and Additions to the existing Student Center and Physical Education  
Buildings and outdoor recreation facilities located at:  
OCC Highland Lakes Campus  
7350 Cooley Lake Road  
Waterford, Michigan 48327

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

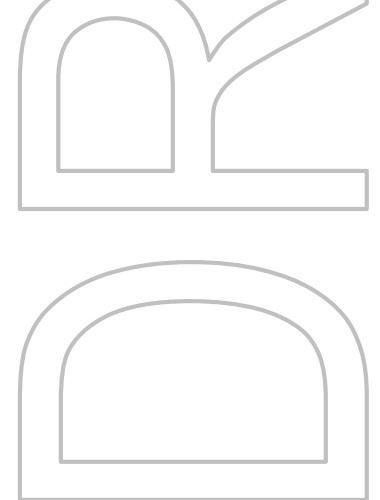
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The Owner and Construction Manager agree as follows.

**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.

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.



**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

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3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ~~EXHIBIT B - INSURANCE AND BONDS~~

## 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.)*

The existing 24,471 s.f. two-story Student Center and adjacent single story 35,098 s.f. Physical Education Building renovations and addition to support Owner programs and support spaces; Owner is seeking to develop 51 acres of the 155-acre campus, as further detailed in the Owner's Request for Proposals dated March 3, 2025, including any Addenda (collectively the "RFP"), which RFP is incorporated herein by this reference.

§ 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.)*

«Construction Management Services for a Student Center and adjacent Physical Education Building renovations and addition and associated site work located at 7350 Cooley Lake Road, Waterford, Michigan.

The Project's defined goals include:

Building and Site Improvements to support Owner's Community/Recreation Center Programs, including but not necessarily limited to, the following:

Construction and renovations of existing site. This may require the following scope of work related to outdoor recreation facilities:

- 51- acre lot
- updating parking lots/drives

Athletic/outdoor recreation Construction Management Services for the Community Center spaces. Some of the potential spaces are listed below:

Outdoor Recreation:

- Pickleball Courts
- Tennis Courts
- Shuffleboard Courts
- Table Tennis Tables
- Bocce Courts
- Playground
- Outdoor Restrooms
- Softball Field
- Athletic Fields
- Amphitheater
- Walking Track
- Dog Park»

§ 1.1.3 The Owner's ~~budget for the Guaranteed Maximum Price, as defined in Article 6:~~anticipated budget for the Project, inclusive of all hard costs and soft costs (whether by the Construction Manager or the Owner's separate contractors), fees, financing costs, FF&E, and other related costs, is as follows:  
(Provide total and, if known, a ~~line-line-~~ item breakdown.)

«Overall Project Budget is Thirty- Three Million Three Hundred Ten Thousand Dollars (\$33,310,000); Design-to (hard construction) budget is Twenty Two Million Dollars (\$22,000,000), plus demolition of High Oaks Hall, Levison Hall & associated tunnel demolition and site/pad restoration, which is budgeted at Two Million Five Hundred Dollars (\$2,500,000). »

§ 1.1.4 ~~The Owner's anticipated design and construction milestone dates:~~

~~.1 — Design phase milestone dates, if any:~~

~~.2 — Construction commencement date:~~

~~.3 — Substantial Completion date or dates:~~

~~.4 — Other milestone dates:~~

Subject to amendment by the Owner, the Project's design milestone and anticipated construction milestone dates shall be as set forth in the Preliminary Major Milestone Schedule attached hereto as **Exhibit D**.

§ 1.1.5 The Owner's anticipated requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:

(Identify any requirements for fast-track scheduling or phased construction.)

«Not applicable. »

§ 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.)

«Not applicable. »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–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~~, 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.)

As set forth in the Owner's RFP.

§ 1.1.8 The Owner identifies the following ~~representative-representatives~~:

.1 Owner's Designated Representative: The Owner identified the following individual as its Owner's Designated Representative in accordance with Section 4.2:  
(List name, address, and other contact information.)

«Anthony Bartolotta, Township Supervisor »  
«Waterford Township »« »  
5200 Civic Center Drive  
Waterford, Michigan 48329

.2 Owner's Representative Consultant.

The Owner has engaged Plante Moran Realpoint, LLC as an Owner's Representative Consultant on the Project. The Construction Manager shall keep the Owner and the Owner's Representative Consultant informed about matters regarding the Project. Unless otherwise provided in this Agreement or specifically authorized by the Owner, the Owner's Representative Consultant is not authorized to commit the Owner in matters regarding changes in the Work, Construction Schedule, or grant approval on behalf of the Owner. The Owner and/or the Owner's Designated Representative have the sole right to make decisions in matters regarding the Project. The following individual, subject to change upon written notification to the Construction Manager, shall be primary contact for the Owner's Representative Consultant:

«Robert Stempien »  
«Plante Moran Realpoint, LLC  
3000 Town Center, Suite 100  
Southfield, MI 48075 »  
«Robert.stempien@plantemoran.com; (248) 603-5252 »

§ 1.1.9 The persons or entities, in addition to the Owner's ~~representative-representatives~~ identified in Section 1.1.7 and the Architect, who are required to review the Construction Manager's submittals to the Owner are as follows:  
(List name, address and other contact information.)

Not applicable.

§ 1.1.10 The Owner ~~shall retain-anticipates retaining~~ the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

~~.4 —Geotechnical Engineer:~~

~~2~~ Civil Engineer:

~~3~~ Other, if any:  
(List any other consultants retained by the Owner, such as a Project or Program Manager.)  
to be determined.

§ 1.1.11 The Architect's representative:  
(List name, address, and other contact information.)

«To be determined.»

« »

« »

« »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article ~~3.3~~. The Construction Manager's representative identified below is authorized to act, and fully bind the Construction Manager and commit the Construction Manager's resources, on behalf of the Construction Manager with respect to the Project.  
(List name, address, and other contact information.)

«To be determined.»

« »

« »

« »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section ~~3.1.9~~: Construction Manager's key team members are:  
(List any Owner-specific requirements to be included in the staffing plan.) of key staff members assigned to the Project and their respective roles)

Team Member Name	Assignment	Contact Information (Mobile Phone & e-Mail)
------------------	------------	---

§ 1.1.13.1 The services of the Construction Manager's key team members are deemed to be personal in nature as to these key team members, and the continuity in the Project's team is valuable to the Owner. Therefore, the Construction Manager shall not substitute a key team member for convenience without the Owner's prior written approval which shall be at the Owner's sole discretion.

§ 1.1.13.1.1 Because the substitution of the Construction Manager's key team members will result in extensive damages and serious loss, that the Construction Manager and Owner understand and agree are impractical and difficult to calculate,

if the Construction Manager substitutes a key team member for its convenience without the Owner's prior written approval the Owner and Construction Manager have established the liquidated damages in Section 1.1.13.1.2 which sets forth a reasonable estimate of the damages that the Owner will incur as a result.

§ 1.1.13.1.2 If the Construction Manager substitutes a key team member for its convenience without the Owner's prior written approval, the Owner shall be entitled to recover from the Construction Manager, as liquidated damages and not as a penalty, the following:

Ten percent (10%) of the Construction Manager's fee for each key team member replaced for convenience without the Owner's prior written approval. Notwithstanding the Owner's recovery of the liquidated damages in this section, the Owner shall have the right to select the replacement for the key team member in accordance with Sections 1.1.13.2 and 1.1.13.3.

§ 1.1.13.2 If a key team member is substituted for any reason, the Owner shall have the right to interview and select alternate Team member(s) employed by the Construction Manager to replace the unavailable Team member. Construction Manager shall agree to provide the services of the alternate team member(s) selected by Owner.

§ 1.1.13.3 Substitution of any key team member for any reason shall not entitle the Construction Managers to an increase of the Contract Time, the Contract Sum, or the Guaranteed Maximum Price, however, where cost of the replacement key team members is less than that key team member being replaced the Owner shall be entitled to a Change Order for a commensurate reduction in the Contract Sum or Guaranteed Maximum Price.

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner specific requirements for subcontractor procurement.)

Reserved.

§ 1.1.15 Other Initial Information on which this Agreement is based:

As set forth in the Owner's RFP.

§ 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, when appropriate,~~ the Owner and the Construction Manager ~~shall appropriately may agree in writing to~~ adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner ~~shall may~~ 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. Notwithstanding the foregoing, the Construction Manager acknowledges that the Initial Information regarding the Project provided by the Owner is preliminary, and that the Construction Manager's services necessarily include assisting the Owner and Architect in refining the parameters of the Project.

§ 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. The terms "Agreement" and "Contract" may be used interchangeably to mean the entire understanding and agreement between the parties.



### § 2.1.1 Defined Terms

Terms which are defined in the AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified, shall have the same meaning when used in this Agreement or other Contract Documents.

### **§ 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 best 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. 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**

The general conditions of the Contract shall be as set forth in AIA Document A201–2017, as modified, which document is attached hereto and incorporated herein by reference. Reference in this Agreement to the AIA Document A201–2017 or the General Conditions of the contract shall mean the AIA Document A201–2017 as modified and attached hereto. The term "Contractor" as used in AIA Document A201–2017 shall mean the Construction Manager and may be used interchangeably herein; the term "Contract Sum," wherever used in AIA Document A201–2017 in reference to a limit of cost, shall mean the Guaranteed Maximum Price.

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. 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 Manager.

### **§ 2.4 Initial Engagement**

Initial engagement of the Construction Manager is for Preconstruction Services only. In addition to any other rights of termination, the Owner reserves the unconditional right to, in its sole discretion, terminate this Agreement at the conclusion of Preconstruction Services and/or solicit proposals from other Construction Managers or contractors for construction of the Project. In the event of such termination by Owner, Owner's sole liability, pursuant to this Agreement or otherwise at law or in equity, shall be payment for Preconstruction Services actually performed.

## **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. The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.2 and 3.3, Exhibit C, and in the applicable provisions of

A201-2017. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.4. The Owner and Construction Manager may agree, in consultation with the Architect, to commence prior to the completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

**§ 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. In addition to the provisions stated within this Agreement, the Construction Manager shall provide design consultation on the Project; to monitor Project costs and to keep costs within established limitations; to schedule the Project efficiently for both design development and construction phases so that the Project will be ready for occupancy at the earliest possible date; and to review the design of the Project with the intent that the most efficient use of materials and methods will be employed to provide quality construction at the least cost.

**§ 3.1.3** Consultation The Construction Manager shall perform its Services and the Work with competence and care, using skill and diligence consistent with honesty, integrity, candor, and in the interests of the Owner, not the interests of its subcontractors, vendors, or suppliers. Unless specifically provided otherwise, 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.

**§ 3.1.3.1** The Construction Manager shall schedule and conduct 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, 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 written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

#### **§ 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: 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 Construction Manager shall comply with Applicable laws relevant 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.

#### **§ 3.1.5 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. The Construction Manager shall immediately notify the Owner in writing in the event of a potential or actual: (a) material change in ownership or structure of the Construction Manager; (b) intent to dissolve; (c) intent to otherwise cease active participation in the Project's local marketplace; or (d) any other change in the Construction Manager's circumstances that could reasonably give rise to concern on behalf of the Owner regarding the Construction Manager's ability or willingness to fulfill any of its obligations under this Agreement (collectively a "Material Change in Circumstances"). In the event of a Material Change in Circumstances, the Construction Manager

shall provide any reasonable assurance or guarantee requested by Owner. Owner shall have the right to terminate this Agreement for cause in the event of a Material Change in Circumstances.

### **§ 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 shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.~~

~~§ 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 E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.~~

### **§ 3.1.11 Subcontractors and Suppliers**

~~§ 3.1.11.1 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.~~

~~§ 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. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.~~

### **§ 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.)*

## **§ 3.2 Guaranteed Maximum Price ProposalPreconstruction Phase**

**§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.**

### **Extent of Responsibility**

The Construction Manager shall exercise the utmost 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. With the exception of Work for which the Contract Documents require the Construction Manager to design, 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 use its expertise to carefully review the Drawings and Specifications and 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.

**§ 3.2.2 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. The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. By signing this Agreement, the Construction Manager certifies to the Owner that the Construction Manager has completed such a preliminary review of the Owner's Program, schedule, and Project budget requirements, and that the Owner's Program, schedule, and Project Budget requirements are reasonably achievable, each in terms of the other.**

**§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price 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;**
- .2 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 trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;**
- .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.**

### **Consultation**

**§ 3.2.3.1 As the Architect progresses through the Schematic Design, Design Development, and Construction Documents phases of the Project, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager, and Architect, an evaluation of the Owner's program, schedule, and construction budget requirements, each in terms of the other. The Construction Manager shall also schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.**

§ 3.2.3.2 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, on site investigations, 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.

§ 3.2.3.3 The Construction Manager shall collaborate with the Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.2.3.4 As the Architect progresses with the preparation of the Schematic Design, Design Development, and Construction Documents, the Construction Manager shall review all Drawings and Specifications, consult with the Owner and Architect and make recommendations:

- .1 regarding the cost, constructability, and schedule;
- .2 regarding equipment, materials, and services;
- .3 to ensure that they contain provisions for all temporary facilities necessary to enable the Construction team to perform their Work, and provisions for all the job site facilities necessary to manage, inspect, and supervise construction; and
- .4 to the Owner and Architect regarding site condition investigation and reporting to identify conditions that may impact the design and performance of the Work. The Construction Manager shall manage the site condition investigation if directed to do so by the Owner.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a 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. Project Schedule  
When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and update a Project schedule for the Architect's review and the Owner's acceptance in accordance with Exhibit D.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price 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 Guaranteed Maximum Price proposal, its basis, or both. 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.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price 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.

#### **Cost Estimates**

§ 3.2.6.1 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 as outlined in Exhibit C. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems. The Construction Manager shall use its best professional judgment in preparing estimates of the Cost of the Work. The Construction Manager's estimate will include a narrative of the factors that may cause its estimates to vary from the lowest bona fide bids for the Work. The Construction Manager shall notify the Owner and Architect in writing in the event an estimate exceeds the Owner's current approved budget for any portion of the Cost of the Work and will assist the Owner and Architect in a value engineering processes to make recommendations for corrective action, including changes in Project scope and design.



§ 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.

#### Subcontractors and Suppliers

§ 3.2.7.1 The Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.2.7.2 The Construction Manager shall develop bidders' interest in the Project both informally during the early design phases and formally during the bidding phase. The Construction Manager shall conduct pre-bid conferences to inform prospective bidders of requirements and answer questions concerning the Project and bidding requirements. Pre-bid conferences will be coordinated with the Owner and Architect. The Construction Manager shall regularly report on its bidders' interest activities to the Owner.

§ 3.2.7.3 The processes described in Article 9 shall apply if bid packages are issued during the Preconstruction Phase.

§ 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.

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. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.2.8.1 The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner-specific requirements for subcontractor procurement.)

§ 3.2.8.2 The Construction Manager shall develop a competitive field of bidders and solicit competitive bids from qualified subcontractors, vendors, and suppliers in accordance with Article 9, Applicable Law, and the Owner's applicable procurement policies for all portions of the Work. In event of a conflict between the requirements of Article 9, Applicable Law, or the Owner's applicable procurement policies, Applicable Law will govern.

§ 3.2.8.3 The Construction Manager shall, after reviewing the bidding documents with the Architect and Owner, assemble bid data including copies of Drawings, Specifications, and Contract Documents, formally advertise and issue invitations for bid in order to obtain competitive bids on appropriate segments of construction, including procurement of equipment, materials, and supplies purchased and incorporated in the Work.

§ 3.2.8.4 The Construction Manager or a related party, as defined in Section 7.8.1, may, with the Owner's prior approval, participate in the competitive bidding for any bid package "Self-performed Trade Work" provided that:

- .1 The Construction Manager notifies the Owner in writing prior to publishing bid documents so that appropriate adjustments, as deemed necessary by the Owner, to the instructions to bidders may be made;
- .2 Self-perform Trade Work shall be procured with the utmost care as not to alienate other trade subcontractors or in any way limit receipt adequate number of bids in the proposed bid category;
- .3 The bidding Subcontractor entity conforms to all requirements of the instructions to bidders, including but not limited to obtaining information and clarifications regarding the scope of Work through the formal RFI process; and
- .4 Where permitted by Applicable Law, the Owner will receive the Self-Performed Trade Work bids directly and 24 hours prior to the otherwise stated bid due date.
- .5 The Construction Manager's or a related party's participation in the competitive bidding process shall not relieve the Construction Manager of any obligation under the Contract Documents including, but not limited to, the Construction Manager's responsibility that the bidding process conform to Applicable Law and the Owner's applicable procurement policies.

§ 3.2.8.5 Awards of all contracts after evaluation and recommendation by the Construction Manager and concurrence of the Architect shall be made upon the Owner's consent. This shall include review and objective opinion of self-perform trade work bid categories by the Construction Manager. The Architect and/or Owner shall attend all scope review meetings for all proposing firms of the self-performed trade bid category. Consent by the Owner shall not relieve the Construction Manager of any of its responsibilities under the Contract Documents. Upon the Owner's consent, the Construction Manager shall award subcontracts to provide all labor and materials for the construction of the Project.

§ 3.2.8.6 The Construction Manager will not utilize, or solicit the participation of any subcontractors, vendors, or suppliers, in any early, accelerated, or similar payment program for the payment of any subcontractors, vendors, or suppliers on the Project without the prior written authorization of the Owner.

§ 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.~~ 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.)

See Exhibit C - Scope of Preconstruction Services.

### **§ 3.3 Construction Phase Guaranteed Maximum Price (GMP) Proposal**

§ 3.3.1 General At a time to be mutually agreed upon by the Owner and the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance in a form substantially similar to the Guaranteed Maximum Price Amendment Form attached as **Exhibit A**. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.3.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 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 or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. 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 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.

§ 3.3.2.1 The Construction Manager shall schedule and conduct 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.

§ 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 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.

§ 3.3.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of the basis for the proposed Guaranteed Maximum Price, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 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 trade categories or systems and consistent with the Draft Guaranteed Maximum Price form included as **Exhibit A**, including allowances; the Construction Manager's contingency set forth in Section 3.3.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .5 A critical path schedule; and
- .6 A date by which the Owner must accept the Guaranteed Maximum Price.

#### **§ 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.

#### **§ 3.3.4 Construction Manager's Contingency**

In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager may include a 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. If the Guaranteed Maximum Price is established prior to any of the Work being bid on or bought out the Construction Manager's contingency may be up to five percent (5%) of the estimated Cost of the Work. When the Guarantee Maximum Price is established with ninety percent (90%) or more of the value of the Cost of the Work bid or bought out, the Construction Manager's contingency shall not exceed two percent (2%) of the estimated cost of the Work.

**§ 3.3.4.1** Construction Manager's contingency shall not be used to cover items resulting from the Construction Manager's negligence. It is further understood and agreed that such contingency shall be the maximum amount available, 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 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 error or omission; and (v) costs arising from default of un-bonded and uncollectible Subcontractor.

#### **§ 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.

**§ 3.3.4.2** Use of the Construction Manager's contingency is conditioned on the Construction Manager first submitting to the Owner for approval a written request for a specific amount and justification for its use if time permitting. The Construction Manager shall report on the use of such contingency on the Applications for Payment. Construction Manager shall forfeit contingency amount committed or used if it failed to report and to submit for payment after two subsequent monthly Applications for Payment.

**§ 3.3.4.3** Because Construction Manager's contingency covers the above -described unanticipated costs, the incidents of unanticipated costs should be reduced as the Project progresses towards completion. Therefore, Construction Manager shall return to the Owner portions of such contingency according to the following schedule unless contingency expenditure at the following Project milestone of construction exceeded the then scheduled amounts:

At Substantial Completion

One Hundred Percent (100%)



§ 3.3.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price 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 Guaranteed Maximum Price proposal, its basis, or both.

§ 3.3.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price 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.

§ 3.3.7 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 which shall be in the form of a Change Order or Construction Change Directive signed by the Architect.

§ 3.3.8 The Owner may 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 may 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.

§ 3.3.9 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.

§ 3.3.10 Construction Manager shall be responsible for paying taxes on construction purchases unless there is a specific exemption available related to Owner's tax-exempt status.

## § 3.4 Construction Phase

### § 3.4.1 General

§ 3.4.1.1 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. The Construction Manager shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

§ 3.4.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. 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.

### § 3.4.2 Administration

§ 3.4.2.1 The Construction Manager shall schedule and conduct meetings no less frequently than bi-weekly 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.

§ 3.4.2.2 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.

### § 3.4.2.3 Monthly Report

The Construction Manager shall report on the progress of the Project as required by the Contract Documents or reasonably requested by the Owner.

#### § 3.4.2.4 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 operating and idle equipment on site, problems that might affect progress of the work, accidents, injuries, visitors, building official inspections, deliveries, and other information required by the Owner.

#### § 3.4.2.5 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 submit this system and its proposed reporting format to the Owner for its review and approval. 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 3.4.2.3 above.

#### §3.4.2.6 Project Documentation

The Construction Manager shall keep, and make available to the Owner and Architect, a full set of Project records, including, but not limited to, all versions of Drawings and Specifications, as-built drawings, bulletins, requests for information and responses to such requests, submittals and responses to such submittals, daily reports, meeting minutes, schedules, correspondence, and applications for payment. The records shall be well organized and maintained electronically in a format the Owner and Architect may readily access.

§ 3.4.2.7 The Construction Manager shall inspect the work of the trade contractors on the Project as it is being performed until final completion and acceptance of the Project by the Owner to assure that the Work performed, and the materials furnished are in accordance with the Contract Documents and that Work on the Project is progressing on schedule. In the event that the quality control testing should indicate that the Work, as installed, does not meet the requirements of the Project, the Architect shall determine the extent of the Work that fails to meet the requirements, and the Construction Manager shall advise the Owner of the corrective action and direct the trade contractors(s) to take appropriate corrective action.

### **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~~, 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~~ provides 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~~ may 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 Provided the Construction Manager carefully review such information, Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner to the extent that is reasonable given the Construction Manager's careful review but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Construction Manager shall request, and the Owner shall furnish tests, inspections, and reports, 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 Construction Manager shall request, and the Owner shall furnish surveys describing known physical characteristics, legal limitations and known 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. Construction Manager shall be responsible for independently confirming the location of utility lines and exercising due caution related thereto.

§ 4.1.4.3 The Owner, when such services are reasonably 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 act on behalf of the Owner with respect to the Project. The Owner's designated representative shall render 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 designated representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, 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 B133™–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 the services, duties and responsibilities of an architect. Upon request of the Construction Manager, 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.)*

The Owner shall compensate the Construction Manager for the Preconstruction Phase services provided by the Construction Manager's Key Team Members identified in Section 1.1.13 on an hourly basis in accordance with the rates set forth in Section 5.1.2. The Construction Manager shall provide the necessary Preconstruction Phase services a Not-to-Exceed amount of (\$ ).

§ 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.)

«As set forth in Exhibit I – Construction Manager's Hourly Rate Schedule. »

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 an applicable employment agreement, law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, bonuses and 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 « » ( « » ) months of the date of this Agreement, through no fault of the Construction ~~Manager~~, Manager or failure of the Project to meet the Owner's stated objectives of scope, schedule, or budget, the Construction Manager's compensation for Preconstruction Phase services shall be equitably ~~adjusted~~ adjusted by a Modification.

## § 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 upon presentation of the Construction Manager's invoice. Amounts ~~unpaid~~ « » ( « » ) days after the invoice date 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.)

~~« »~~ % Prime interest rate as published in the Wall Street Journal on first day of the month when owed payment becomes delinquent; however, shall not exceed six percent (6%) per annum.

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 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.)

The Construction Manager's Fee shall be \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the Cost of the Work.

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

If the Construction Manager's Fee is based on a percentage of the Cost of the Work, the basis of the Construction Manager's Fee shall not be adjusted based on changes in the Work, however, the Construction Manager's Fee shall be adjusted based on the percentage set forth in Section 6.1.2 for any changes to the Cost of the Work.

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

A subcontractor's overhead and profit shall not exceed ten percent (10%) of the actual cost of the changed Work, labor, equipment and material of a primary tier subcontractor; and/or five percent (5%) of the actual cost of changed Work, labor, equipment and material of a lower tier subcontractor.

§ 6.1.5 Reimbursable rental rates for equipment must be provided in writing to the Owner in advance for approval and to the are subject to the following limitations:

.1 Rental rates for leased or rented equipment will be at the actual, documented lease or rental cost.

- .2 Rental rates for Construction Manager-owned, related party-owned, or Subcontractor-owned equipment will not exceed the owned equipment rate set for each unit in the current edition of EquipmentWatch and no additional compensation shall be paid for operating costs.
- ~~§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed    percent (    %) of the standard rental rate paid at the place of the Project.~~
- .3 Rental rates for Construction Manager-owned, related party-owned or Subcontractor-owned equipment that has been idled due to a compensable delay shall not exceed on-half the owned equipment rate set for each unit in the current edition of EquipmentWatch and no compensation shall be paid for operating costs. Further, all equipment must be on site during the delay, be necessary for a critical path activity, and be unable to be used on a different activity. The Construction Manager shall bear the costs for such equipment that has been idled due to a non-compensable delay.
- .4 The total rental rates paid for any small tool, those having total value less than \$2,500, shall not exceed the total amount of that tool.
- .5 The Construction Manager acknowledges its responsibility to actively mitigate Project costs including, but not limited to, rental costs and rental costs of idle equipment.

**§ 6.1.6 Liquidated damages, if any:**

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

**§ 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.)~~

~~«Not applicable.»~~

**§ 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, which shall be in a form substantially similar to that attached hereto as Exhibit A, subject to additions and deductions by Change Order as provided in the Contract Documents. The Guaranteed Maximum Price guarantees that the Cost of the Work for the Hard Costs, Construction Manager's Direct Costs, and Personnel Costs are separately Guaranteed Line Items that shall not exceed the amount set forth in the Guaranteed Maximum Price Amendment. Costs which would cause the Guaranteed Maximum Price or a Guaranteed Line Item to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

**§ 6.2.1** The Guaranteed Maximum Price Amendment and the Construction Manager's Guaranteed Maximum Price proposal shall include the following Guaranteed Line Items within the Cost of the Work and shall only be adjusted by a signed Change Order:

- .1 **Construction Manager's Direct Costs.** The Construction Manager's Direct Costs include the costs to the Construction Manager for its insurance and bonds required under the Contract Documents as set forth in Section 7.6.1.
- .2 **Construction Manager's Personnel Costs.** The Construction Manager's Personnel Costs include the costs to the Construction Manager for its personnel as set forth in Section 7.2.
- .3 **Construction Manager's Hard Costs.** The Construction Manager's Hard Costs shall include any Cost of the Work authorized under Article 7 not included in the Construction Manager's Direct Costs or the Construction Manager's Personnel Costs.

**§ 6.2.2** The Guaranteed Maximum Price Amendment shall include an itemized schedule of values. As each Subcontract is awarded, the excess of the Estimated Costs of the Work (as shown on the schedule of values included in the Guaranteed Maximum Price Amendment) over the actual amount of the awarded for the applicable Subcontract shall be credited to a Buy-Out Savings line item on the schedule of values. Any excess in the actual amount of any awarded Subcontract over the Estimated Costs of the Work allocated to such Subcontract in the schedule of values shall be transferred from the Buy-Out Savings line of the schedule of values so long as sufficient funds remain in such line. This shall be an aggregate calculation, taking into consideration any Subcontracts that may have exceeded the budgeted amounts. Upon the completion of the awarding of all Subcontracts, any amount remaining in the Buy-Out Savings line of the schedule of values shall be returned to the Owner via Change Order.



### § 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, ~~deletions-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~~.Work.

§ 6.3.1.1 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.

§ 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 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 actual costs necessarily incurred by the Construction ~~Manager~~.Manager, without markup, 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.

§ 7.1.2 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.

§ 7.1.3 ~~Costs shall be at rates not~~ Costs, wages, salaries, and charges, as used in this Article 7, shall mean actual costs without markup, except that in no event shall such costs, wages, salaries, or charges be at rates higher than the standard rates paid at the place of the Project, except with prior written approval of the Owner.

### § 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the 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 below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

«To be established with the GMP Amendment. »

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged 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.

§ 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. 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 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.

§ 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. Reserved.~~

§ 7.6.1.2 ~~Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval. Reserved.~~

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental ~~authority, 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 for~~ 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, ~~resulting from the Owner's acts or omissions but~~ 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 ~~Expenses Subject to the Owner's prior written approval, expenses~~ incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

## § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior ~~written~~ 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, ~~Subcontractors, or suppliers,~~ and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from ~~insurance, insurance (except that the Owner shall not be responsible for costs not covered due to any deductible self-insured retainage),~~ 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. NOT USED~~



## § 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 in writing 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 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. The approval and notice obligation regarding related parties shall apply to any transaction with a related party of any tier of subcontract or supplier agreement.

## § 7.9 Costs Not To Be Reimbursed

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

- .1 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 written 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, Owner~~ that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~
- .9 Costs for services incurred during the Preconstruction ~~Phase-Phase~~;
- .10 Unless authorized in writing in advance by the Owner, any costs for subcontractor default insurance or subcontractor bonds;
- .11 Corporate accounting, data and check processing, and similar business transaction related costs related to the Work are part of Construction Manager's overhead business expenses and should have been included in Construction Manager's Fee;
- .12 All taxes (except for sales or use taxes – Ref. Section 7.6.2), including, but not limited to, Federal, State or Local Business Tax, Franchise Tax, Commercial Activities Tax, or similar taxes are the responsibility of the Construction Manager; and the Owner shall not pay or reimburse the Construction Manager for such tax obligations;
- .13 Consultants to the Construction Manager not previously approved in writing by the Owner;
- .14 Rental charges more than two weeks before and one week after the temporary facility, machine, or equipment is needed for the Work;
- .15 Premiums for performance and payment bonds obtained by Subcontractors without the Owner's express written approval;
- .16 Costs of self-insurance or costs of insurance through a captive insurer owned or controlled by the Construction Manager; and
- .17 Any costs associated with an early or accelerated payment program.

## 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, or refunds; equipment rental discounts, rebates, or refunds, insurance and surety bonding discounts and credits, 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 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel 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, which~~ the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from ~~Subcontractors, and from subcontractors and~~ 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. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, 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.

§ 9.3 Subcontractor allowances shall be disclosed to the Owner and are subject to Section 3.8 of the AIA Document A201-2017.

§ 9.4 Any subcontract that includes work or supplies of a related party at any tier or level shall be subject to the provision of Sections 1.1.14.3 and 7.8.

## ARTICLE 10 ACCOUNTING RECORDS

§ 10.1 The Construction Manager shall implement the cost control system required by Section 3.4.2.5 and 3.4.2.6 and 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 interview the Construction Manager's employees regarding the cost control system and 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 three years after final payment, or for such longer period as may be required by law.

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 three years after final payment, or for such longer period as may be required by law. § 10.2 If an audit, inspection, or examination under Section 10.1 or Section 11.2.2 discloses an over-payment by the Owner, the Construction Manager shall refund the over-paid amount to the Owner. In the event the Construction Manager has overbilled the Owner in excess of one-half percent (0.5%) of the total Cost of the Work, the Construction Manager shall also reimburse the Owner the actual cost of the Owner's audit, inspection, or examination expenses.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon properly completed and supported 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, or as follows: month.

§ 11.1.3 Provided ~~that~~ an Application for Payment is received by the Architect not later than the «15th» day of a month, the Owner shall make payment of the amount certified to the Construction Manager 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 ~~( )~~ sixty (60) days after the Architect receives the Application for Payment.

§ 11.1.3.1 Notwithstanding payment provision in Section 11.1.3 above, if the Project financed is through a loan or grant or other financing arrangement, and the lender or financing entity is required to review and/or approve Application for Payment before Owner can make payment of the certified amount to the Construction Manager, payment of the certified amount to the Construction Manager shall not become due before five (5) business days after receiving approval and payment from lender or financing entity.  
(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.

§ 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. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; Work, with General Conditions Costs stated as a separate line on the schedule of values; (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 Owner or Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation-Except for items set forth in Section 6.2.1, the allocations 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 a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect, Owner and Architect which shall be memorialized by a no cost Change Order.

§ 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:

- .1 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
- .4 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:

- .1 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 withheld pursuant to Section 9.5 of the AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 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
- .6 Retainage withheld pursuant to Section 11.1.8.

#### § 11.1.8 Retainage

§ 11.1.8.1 For To the extent permitted by law, 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.)*

Ten percent (10%).

§ 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.)*

Not Applicable.

§ 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.)

- .1 The Owner, in its sole discretion but after consulting with the Construction Manager and Architect, may release retainage for a trade or subcontractor at any time.
- .2 When the Owner agrees the Work is fifty percent complete, retainage withheld from payments to the Construction Manager shall be reduced to five percent (5%), except that if Owner determines in its sole discretion that performance of the Work has not progressed in a timely manner or otherwise has not been performed as required by the Contract Documents, the Owner may elect to continue to subject future payments for the Work on the Project, or as applicable, the Work of any particular Subcontractor, to retainage of ten percent (10%) and not release any portion of retained amounts as provided above.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

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

The Owner may withhold retainage as set forth in Section 9.8.5 of the AIA Document A201-2017.

§ 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 and Owner 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 or Owner have 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 or Owner have made exhaustive or continuous on-site inspections; or (3) that the Architect has or Owner have 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.

## § 11.2 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

- .1 the Construction Manager has fully 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 Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 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. In accordance with Article 9 of the AIA Document A201-2017, the Owner may audit the Project's records and accounting after the Architect's final Certificate for Payment.~~ The Architect is not responsible for ~~verifying the accuracy of auditing the accuracy of the Construction Manager's final accounting, however the Architect shall exercise reasonable care in reviewing~~ 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 any undisputed~~ amount certified in the Architect's final Certificate for ~~Payment. Payment, however, the Owner may withhold any disputed amounts.~~

§ 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:~~

~~after resolution of any dispute over the Owner's audit, or after resolution of all Claims, whichever comes last.~~

§ 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.)~~

~~%~~

§ 11.2.5 Amounts withheld from the final payment to cover any incomplete work are not considered retainage and shall not be paid to the Construction Manager until the Work is actually completed and accepted by the Owner. Such withholdings shall not be less than one hundred fifty percent (150%) of the estimated cost to complete the Work.

§ 11.2.6 The Owner shall have the right to deduct from the Final Payment due the Construction Manager all costs, including additional fees paid to Owner's consultants, which the Owner incurred as result of and attributed to Construction Manager's failure to fully complete and/or closeout the Project within sixty (60) days following Substantial Completion.

§ 11.2.7 Unless otherwise agreed to by the Owner, in writing, the Owner shall not be responsible for any costs incurred by the Construction Manager beyond sixty (60) days following Substantial Completion.

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

§ 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. However, for Claims arising from or relating to the Construction

Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to ~~mediation or binding dispute resolution, mediation,~~ and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*



## § 12.2 ~~Binding Dispute Resolution~~Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, if a Party has a Claim, it shall provide written notice to the other Party. "Claim" means a demand or assertion by one of the Parties seeking a payment of money or other relief with respect to the terms of this Agreement. Claim also includes disputes and matters in question between Owner and Construction Manager arising out of this Agreement. A Party wishing to make a Claim shall be responsible for substantiating the Claim and providing notice of the Claim to the other Party. The signatories to this Agreement or their successors in office/position shall meet within ten (10) business days of receipt of the Claim. The signatories to this Agreement or their successors, shall attempt to resolve the Claim in good faith. If the Parties agree to a resolution of the Claim, they shall embody the resolution in writing. If the Parties are unable to resolve a Claim after meeting, they may submit the Claim to mediation as agreed to by the Parties. If the Claim is not resolved by ~~mediation,~~ the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

☒ Arbitration pursuant to Article 15 of AIA Document A201–2017

☐ ~~Litigation in a court of competent jurisdiction~~ ☒ Litigation in the 51st District Court or the 6th Circuit Court located in Oakland County, Michigan, or the U.S. District Court for the Eastern District of Michigan-Southern Division, where the Construction Manager agrees these courts have personal jurisdiction over it and is a convenient venue. The Construction Manager shall be bound by this jurisdiction and venue. The Construction Manager shall continue to perform its obligations under the Agreement during the pendency of any dispute resolution proceedings.

☐ ~~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, agree in writing to use mediation for dispute resolution,~~ Claims will be resolved by litigation in a court of ~~competent jurisdiction~~ jurisdiction provided above.

## 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.~~ Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for 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-cause.~~

§ 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-orders,~~ or rental agreements as described above, the Owner will reimburse ~~or indemnify the Construction the Construction~~ Manager for all costs arising under the subcontract, purchase ~~order-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-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-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;~~ this Agreement.

### § 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'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;
- .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 Used.

#### § 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.~~A201-2017.

### 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.~~Contract and the attempted assignment shall be void.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender ~~providing~~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 ~~(\$ -) for each occurrence and (\$ -) in Three Million and No / 100 Dollars (\$ 3,000,000.00) for each occurrence and Three Million and No / 100 Dollars (\$ 3,000,000.00) in the aggregate for bodily injury and property damage.~~ Such amount may be included in an umbrella or excess policy.

§ 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 and No / 100 Dollars (\$ 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.~~

§ 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 ~~(\$ -) each accident, (\$ -) each employee, and (\$ -) One Million and No / 100 Dollars (\$ 1,000,000.00) each accident, One Million and No / 100 Dollars (\$ 1,000,000.00) each employee, and One Million and No / 100 Dollars (\$ 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 ~~(\$ -) per claim and (\$ -) Two Million and No / 100 Dollars (\$ 2,000,000.00) per claim and Four Million and No / 100 Dollars (\$ 4,000,000.00) in the aggregate.~~

#### § 14.3.1.6 Other Insurance

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

##### Coverage

Owner's and Contractor's Protective Liability Coverage

##### Limits

\$3,000,000 each occurrence

\$3,000,000 in the aggregate

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella ~~polices~~ policies for Commercial General Liability and Automobile Liability to include ~~the Owner as an additional insured the Owner, its elected and appointed officials, employees, agents and volunteers, Plante Moran Realpoint, LLC, the Architect and Architect's consultants as additional insureds~~ for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. Construction Manager shall have no right of subrogation against Owner and no right to indemnification from Owner unless otherwise provided by law.

§ 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.

#### § 14.3.2 Construction Phase

~~After execution of the Guaranteed Maximum Price Amendment, Prior to the Construction Manager's commencement of the Work or mobilization on site,~~ the Owner and the Construction Manager shall purchase and maintain insurance as set forth in ~~AIA Document A133™-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 Section 14.3.1 above and~~ elsewhere in the Contract Documents.

§ 14.3.2.1 ~~The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents.~~ Performance Bond and Payment 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.)

##### Type

Payment Bond

Performance Bond

##### Penal Sum (\$0.00)

100% of the Contract Sum

100% of the Contract Sum

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

The Construction Manager shall subcontract with Subcontractors that are trustworthy, financially able, and have a track record in successfully completing trade works of similar size and complexity. Therefore, the Construction Manager may in its discretion, determine if any Subcontractors will need to supply performance and payment bonds. If bonds are required of any Subcontractors, all such bonds shall be (i) purchased solely at the expense of the Construction Manager (or the Subcontractor supplying them), without reimbursement under the Contract Sum or Guaranteed Maximum Price or otherwise, and (ii) dual obligee bonds, naming the Owner as one of the obligees. The Owner may in its discretion determine, with the recommendation of the Construction Manager to require a Subcontractor to supply performance and payment bonds in addition to the Construction Manager's bond when (i) the Subcontractor's bid including the added cost of the bond is significantly below the next bona fide bid, and (ii) the Construction Manager has no previous experience or work experience with the Subcontractor, and (iii) it is necessary to accept the Subcontractor's bid in order to meet the established Guaranteed Maximum Price. In such event, the Owner shall reimburse the Construction Manager for purchasing the bond for the Subcontractor under the Contract Sum. Owner will not accept sub-guard insurance in lieu of performance and payment bond.

**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below: A201-2017.  
*(If other than in accordance with a building information modeling exhibit, 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 GOVERNMENT AGENCY'S IMMUNITY FROM TORT LIABILITY.** Notwithstanding any provisions within the Contract Documents, no provisions shall be deemed a waiver of any immunity granted the Owner, being a governmental entity under Michigan Law.

**§ 14.5.2 PROTECTED HEALTH INFORMATION.**  
Not Used.

**§ 14.6 USE OF GRANT FUNDS.** Portions of the Project, including the professional services to be provided under this Agreement may be funded by state, federal or other sources. If Owner receives grant funds, Owner shall provide Construction Manager with all grant requirements applicable to the Project that pertain to Construction Manager. If a grant requires specific language to be included in the Agreement that is not currently included, the Parties shall amend the Agreement to include the required grant language. Construction Manager shall cause the requirements of the grants received by Owner for this Project to be incorporated into the provisions of each Subcontractor Agreement.

## **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 A133™-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 A133™-2019, Exhibit A, Guaranteed Maximum Price ~~Amendment, if executed~~ Amendment
- .3 ~~AIA Document A133™-2019, Exhibit B, Insurance and Bonds~~ Not Used.
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 ~~Building Information Modeling Exhibit, if completed; AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~  
(Insert the date of the E203-2013 incorporated into this Agreement.)  
«Not Used. »
- .6 Other Exhibits:  
(Check all boxes that apply.)

[ « » ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
(Insert the date of the E234-2019 incorporated into this Agreement.)

« »

[ ☐ ] [ « » ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

[ ☒ ] Other:

[Exhibit C – Scope of Preconstruction Services](#)  
[Exhibit D – Phasing and Project Milestone Schedule](#)  
[Exhibit E – Construction Manager’s Certificate\(s\) of Insurance and Bonds](#)  
[Exhibit F – Not Used](#)  
[Exhibit G – Owner’s Certificate of Exemption](#)  
[Exhibit H – Not Used](#)  
[Exhibit I – Unit and Hourly Rate Schedule](#)

**.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.)*

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

WATERFORD TOWNSHIP,

**OWNER** (Signature)

«Anthony M. Bartolotta, Township Supervisor»

(Printed name and title)

(date)

**CONSTRUCTION MANAGER** (Signature)

« » » » »

(Printed name and title)

(date)

# DRAFT AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:  
(Name and location or address)

The Charter Township of Waterford  
Renovations and Additions to the existing Student Center and Physical Education  
Buildings and outdoor recreation facilities located at:  
OCC Highland Lakes Campus  
7350 Cooley Lake Road  
Waterford, Michigan 48327

THE OWNER:  
(Name, legal ~~status~~-status, and address)

«Waterford Township »« »  
5200 Civic Center Drive  
Waterford, Michigan 48329

THE ARCHITECT:  
(Name, legal ~~status~~-status, and address)

« »« »  
« »

THE CONSTRUCTION MANAGER (also referred to as the "CONTRACTOR" herein):  
(Name, legal ~~status~~-status, and address)

« »« »  
« »

**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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.



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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) and consist of the Agreement, Conditions of the Contract (General, ~~Supplementary~~ 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. ~~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.~~

§ 1.1.1.1 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. An assemblage of documents compiled as a project manual is not the Contract Documents, and the inclusion of a document in any such assemblage does not incorporate it into the Contract Documents unless it is specifically enumerated in the Agreement.

#### § 1.1.2 The Contract (also referred to the "Agreement" herein)

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) consultants,~~ (4) between the Contractor and the Owner's consultants, or (5) 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 the construction and services required by the Contract Documents, whether completed or partially completed, and includes all ~~other~~ labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 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~~ 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.

### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### § 1.1.9 Construction Team

The Construction Team consists of the Contractor, Subcontractors, sub-subcontractor at any tier, suppliers and (i) all other persons in privity of contract with any of them in connection with the Work (except the Owner), (ii) anyone else providing labor, materials, supplies, equipment, or services as part of or in connection with the Work (except those, if any, hired directly or indirectly by the Owner), and (iii) all of their officers, employees, agents, and independent contractors.

### § 1.1.10 Project Team

The Project Team includes those listed in Section 1.1.9 and the Owner, the Owner's Representative Consultant, and the Architect in their official and individual capacities, their consultants, administrators, employees, agents, contractors, successors, assignees, and all other persons in privity of contract with any of them in connection with the Project.

### § 1.1.11 Applicable Law

Applicable Law refers to any applicable laws and statutes of the State of Michigan and the ordinances, codes, rules and regulations, or lawful orders of the Charter Township of Waterford and State of Michigan or other public authorities bearing on the Work, Project, and the Construction Team's activities in relation to the Work and Project.

### §1.1.12 OWNER'S REPRESENTATIVE CONSULTANT

The Owner's Representative Consultant means a consultant engaged by the Owner as outlined in the Agreement to advise them regarding certain aspects of the Project. The Owner's Representative Consultant is not authorized to commit or otherwise obligate the Owner including in matters regarding changes in the Work, construction schedule, or other approvals on behalf of the Owner.

### §1.1.13 Knowledge

The term "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractors, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Document. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

## § 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 Contractor, but Contract Documents are by nature generally diagrammatic. The Contractor shall therefore provide labor and materials that are consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results, results for the Contract Sum and Contract Time, even if an item is not specifically drawn or specified. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and Applicable Law, the Contractor shall: (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.1, however, shall not relieve the Contractor of any obligations set forth in Section 3.2 and 3.7.

§ 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. 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.

§ 1.2.3 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. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Work not particularly detailed, marked, or specified shall be the same as similar parts that are detailed, marked or specified. On certain Contract Documents, only a portion of the detail may be fully shown, and the remainder indicated in outline, in which case the general detail shall be understood as applying also to other like portions of the Work. For example, if case carving, ornament, facing, veneer, or similar treatment is indicated by starting of the detail, such detail must be continued throughout the course of parts in which it occurs, and to all similar parts in the Work wherever such general detail shall apply unless otherwise specifically provided in the Contract Documents. Organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings into categories does not relieve the Contractor of its obligation to coordinate the Work, does not control the Contractor in dividing the Work among Subcontractors, and does not establish the extent of Work to be performed by any trade. Similarly, the organization of the Contractor's duties into different phases or categories in the Contract Documents is for convenience only and shall not limit the Contractor's obligation to provide all of the Work. The Contractor shall reconcile any such conflict presented by such organization without delay or cost to the Owner.

§ 1.2.4 References in the Contract Documents to standards, such as those published by trade associations and governmental agencies, whether for materials, processes, assemblies, workmanship, performance, or any other purpose, shall mean the version of the standard published most recently prior to the date of the particular part of the Contract Documents bearing the reference. Unless expressly modified, all standards referred to by the Contract Documents have the same contractual effect as though restated therein. These standards will not be furnished to the Contractor, as the Contractor and all members of the Construction Team are required to be familiar with their requirements.

§ 1.2.5 Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both. Nothing in this Section 1.2, however, shall relieve the Contractor of any of its obligations under the Contract Documents. The Contractor shall be responsible for timely and thoroughly reviewing the Contract Documents to fully understand the nature and the scope of the Work and shall promptly notify the Architect upon the discovery of any potential conflicts, discrepancies, gaps, or other deficiencies. It is acknowledged by the Contractor that the Contractor has had, or will be afforded, the opportunity to review and seek clarification of the Contract Documents prior to entering into any Subcontract for the Work or entering into an agreement or amendment establishing the Contract Sum, Guaranteed Maximum price, or the Contract Time. The resolution of potential conflicts, discrepancies, gap, or other deficiencies of the Contract Documents shall be resolved under the following priorities:

- .1 Executed Amendments to the Contract ;
- .2 The Agreement;
- .3 These General Conditions of the Contract for Construction;
- .4 Addenda, with those of later date having precedence over those of earlier date;
- .5 The Supplementary Conditions;
- .6 Division 00 and 01 of the Specifications (or similar information if the Specifications are in a format other than the Divisions outlined by the Construction Specification Institute's Master Format);
- .7 Drawings and Divisions 2-49 of the Specifications (or equivalent information if the Specifications are in a format other than the Divisions outlined by the Construction Specification Institute's Master Format) as interpreted and prioritized by the Architect in accordance with Section 4.2.11, 4.2.12 and 4.2.13;
- .8 Other documents specifically enumerated in the Agreement as part of the Contract Documents.

§ 1.2.6 Unless otherwise stated in the Contract Documents, words or abbreviations that have well-known technical, or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.7 The singular shall include the plural and vice versa. Pronouns are interchangeable. The word "person" includes human beings and recognized legal entities. Unless the context clearly requires otherwise, reference to a section shall include all subsections beneath it bearing identical introductory numbers.

### **§ 1.2.8 Delegated Design**

§1.2.8.1 In the event the Contract Documents delegate the design of a portion of the Work to the Contractor or the Construction Team, or otherwise require the performance of professional services, the Contractor will provide all such services with the standard of care that would be followed on a comparable project by a reasonably skilled design professional in the same field working in the locality of the Project. The Contractor shall provide the services through a properly licensed design profession whose signature and seal shall appear on all drawings, specifications, submittals, and other deliverables. All Work designed by the Contractor or Construction Team shall be in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.2.8.2 The Contractor will cooperate with the Architect and the Owner's consultants in the performance of any design that has been delegated to it in order to ensure its design can be coordinated with the Architect's design for the other portions of the Project.

§ 1.2.8.3 The Contractor will promptly inform the Owner of information needed to meet the Contractor's obligations under this Section 1.2.8.

§ 1.2.8.4 The Contractor grants, or will cause to be granted, to the Owner a perpetual, nonexclusive license to use all designs prepared by or for the Construction Team for constructing, using, maintaining, altering, and adding to the Project in the future.

### **§ 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 agreement between the Owner and Architect shall establish the ownership of the Instruments of Service, including the Drawings and Specifications, and Specifications and who will and retain all common law, statutory, and other reserved rights in their the 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' any 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 applicable consultants.

§ 1.5.3 In the event the Contract Documents require the Contractor to produce any intellectual property, the Contractor grants to the Owner a perpetual nonexclusive license to use and reproduce it for purposes of constructing, using, maintaining, altering, and adding to the Project, now and in the future. The Contractor shall obtain similar perpetual nonexclusive licenses from its Subcontractors and consultants. The license granted under this section permits the Owner to authorize its consultants, the Architect and its consultants, and the Owner's Separate Contractors to use and reproduce applicable portions of the intellectual property for purposes.

## § 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 United States Postal Service first class, certified, or registered mail, or by courier providing proof of delivery.

## § 1.7 Digital Data Use and Transmission

The ~~parties~~ Architect and Contractor shall agree upon ~~written~~ protocols governing the transmission and use ~~of, and reliance on, of~~ Instruments of Service or any other information or documentation in ~~digital form~~ digital form by the Construction Team. The Architect and Contractor may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. No such protocols agreed upon by the Architect and Contractor shall in anyway relieve the Architect or any member of the Construction Team of any obligations or duty to the Owner, impact the Owner's rights in any Instruments of Service or document, impose any obligation upon the Owner, nor give rise to any Additional Services of the Architect, charges to the Architect or Contractor, nor any change to the Contract Sum or Contract Time.

## § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model by the Construction Team without agreement to ~~written~~ protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to ~~the any~~ other party ~~and or~~ its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## § 1.9 Confidentiality

§ 1.9.1 "Confidential Information" means information that is exempt from disclosure under the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231. et. seq. The Contractor shall not communicate or disclose at any time to any person any information concerning the Work or the Project that is "Confidential Information", except: (i) with prior written consent of the Owner, (ii) information which has become part of the public domain prior to the date of the Agreement, (iii) information which becomes part of the public domain by means other than an unauthorized act or omission of the Contractor, (iv) as may be required to perform the Work or by any Applicable Law, or (v) to its professional advisors or lender (all of whom shall be required to maintain such information in confidence). The obligations of Section 1.9 are in addition to any separate confidentiality agreement with the Owner and shall not supersede or otherwise modify any such agreement.

§ 1.9.2 Where the Owner has designated information furnished as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose information concerning the Work or the Project, after providing seven days' advanced notice to Owner, when disclosure is required by law, including a subpoena or other form of compulsory legal process. In the event of a disclosure required by law, the Contractor shall notify the Owner as far in advance as possible prior to any such disclosure and will reasonably cooperate with the Owner, at the Owner's expense, in any attempt it may make to obtain a protective order or other appropriate assurance that confidential treatment will be afforded the information. The Contractor may also disclose "confidential" information concerning the Work or the Project to its employees, consultants, sureties, and members of the Construction Team who need to know the content of such information solely and exclusively for the Project and who agree to maintain its confidentiality.

§ 1.9.3 Members of the Construction Team shall promptly upon the request of the Owner return and surrender to the Owner the original or legible copies of any materials, records, notices, memoranda, recordings, Drawings, Specifications and mock-ups and any other documents furnished by the Owner and certify the destruction of any electronic copies of such documents.

§ 1.9.4 The Contractor shall not identify, either expressly or by implication, the Owner, or its corporate affiliates, or use any of their trademarks, trade names, service marks, other proprietary marks, or reference the services performed under the Agreement, in any advertising, press releases, publicity matters, or other promotional materials without the Owner's prior written approval.

§ 1.9.4 The Contractor shall cause all members of the Construction Team to specifically acknowledge that the provisions of this Section 1.9 are binding upon them.

## **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 Architect and Owner's Representative Consultant do not have authority to modify the Contract Sum or the Contract Time, and they may only act on the Owner's behalf with respect to other matters to the extent set forth in the Contract Documents.~~ The term "Owner" means the Owner or the Owner's authorized representative. The Owner may designate more than one authorized representative to act on its behalf but shall describe the authority of the authorized representative(s) in writing to the Contractor and Architect.

§ 2.1.2 ~~The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, Contractor shall timely request and obtain from the owner, and if required under Applicable Law, conspicuously post on the Project site information necessary and relevant for the Contractor-Construction Team to evaluate, give notice of, or enforce mechanic's lien rights, construction or mechanic's lien rights if they apply to the Project.~~ 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.

§ 2.1.3 The Owner may provide information necessary for members of the Construction Team to perfect assert claims on the Contractor's payment bond if one has been provided.

### **§ 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.~~

§ 2.2.4 Except as otherwise provided by law, all information on the Owner's financing arrangements provided to the Contractor is confidential and is subject to the provisions of Section 1.9, except that the Contractor will not disclose such information to the Construction Team without the Owner's prior written authorization.

### **§ 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 pay, if needed,~~ for necessary approvals, easements, ~~assessments assessments,~~ and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. All permits and approvals not specifically identified in the Agreement or Contract Documents as the responsibility of the Owner are the responsibility of the Contractor.

**§ 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 may employ a successor~~ whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** The Owner shall furnish surveys describing known physical characteristics, legal ~~limitations limitations,~~ and utility locations for the site of the Project, and a legal description of the site. ~~The To the extent reasonable and conditioned upon the Contractors careful review of such information, 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 of the Work and its impact on existing facilities and utilities. The Contractor shall advise the Owner and Architect of additional information that may be needed to limit the Work's impact on them or is otherwise advisable. The Contractor shall promptly notify the Owner and the Architect of any errors, problems, or inaccuracies in any of the information provided by the Owner.

**§ 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.

**§ 2.3.6** ~~Unless otherwise provided in the Contract Documents, If requested by the Contractor,~~ 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 Documents,~~ fails to carry out Work in accordance with the Contract Documents, ~~or fails to meet any other obligation imposed by the~~ Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order 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. This right shall be in addition to the Owner's other rights under the Contract Documents and common law. The exercise of the Owner's right to stop the Work shall not relieve the Contractor of any of the Contractor's responsibilities and obligations under the Contract Documents.

### **§ 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.~~ **§ 2.5.1** If the Contractor defaults on any obligation imposed by the Contract Documents or neglects to carry out the Work within the construction schedule or 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, take any action necessary to mitigate or correct such default or neglect, including removal of non-conforming Work and disposal of excess materials, and may charge the Contractor for the cost of doing so. The Owner does not become the Contractor's bailee by exercising rights granted by this Section 2.5. The Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent necessary to reimburse the Owner for the cost of mitigating or correcting such deficiencies, including Owner's expenses and compensation for professional fees and 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.

**§ 2.5.2** Upon notification to the Contractor, the Owner shall have the right to place and install equipment and machinery during the progress of the Work before the completion of the various parts of the Work. Such placing and installing of equipment and machinery shall not in any way evidence the completion of the Work or any portion thereof by the Contractor, nor signify the Owner's acceptance of the Work or any portion thereof. If the Owner places or installs such equipment and machinery with its own forces, the Owner shall be responsible for any damage to Work of the Contractor caused by the Owner's workers. If the Owner engages another contractor for such placement or installation, the Owner shall require said contractor to be responsible for such damage caused by its work, its workers, or its subcontractor. Upon discovery of any such damage, the Contractor shall have the right to request and file a Contractor's Request Change Order under Section 7.5.

#### **§ 2.6 Limitation on the Owner's Responsibility**

**§ 2.6.1** The Owner, Architect, and Owner's Representative Consultant do not have control over or charge of and are not responsible for construction means, methods, techniques, sequences, or procedures, or safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Owner, Architect, and Owner's Representative Consultant are not responsible for the Contractor's failure to perform Work in accordance with the Contract Documents. The Owner, Architect, and Owner's Representative Consultant do not have control over or charge of and are not responsible for acts or omissions of any member of the Construction Team.

**§ 2.6.2** The Contractor shall only be entitled to rely upon instructions and directions provided in writing by the Owner's authorized representative(s).

**§ 2.6.3** From time to time the Owner may review or take action on the Contractor's Shop Drawings, Product Data, Samples, and other submittals and may review, observe, or take other appropriate action concerning the Work and the selection of the Construction Team. However, such activities by the Owner do not alter or relieve the Contractor or the Architect of their obligations under the Contract Documents unless memorialized in an amendment to the Contract.

### **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.

**§ 3.1.2** The Contractor shall perform the Work in strict accordance with the Contract ~~Documents~~ Documents and current Applicable Law.

**§ 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.

§ 3.1.4 Unless the Contract Documents provide otherwise for a specific circumstance, the Contractor bears the risk of loss to the Work until it, or the relevant portion of it, has been accepted as substantially complete. Thereafter, a Certificate of Substantial Completion accepted by the Owner under Section 9.8 or 9.9 shall assign the risk of loss. This Section 3.1.4 does not prevent the Contractor from recovering sums paid by the applicable property insurer for loss to the Work, after the Contractor has satisfied the deductible associated with such payment.

### **§ 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-is~~ familiar with ~~local-the~~ conditions under which the Work is to be performed, and ~~has~~ correlated personal observations with requirements of the Contract Documents. ~~Prior to establishing the Contract Sum, Guaranteed Maximum Price, or Contract Time, the Contractor and the Construction Team have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, history, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools and equipment, and (v) other similar issues. The Owner has no responsibility or liability under this Agreement for the physical condition or safety of the Project site or any improvement on the Project site. Except as provided under Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. Except as permitted by Sections 3.2.4 and 3.7.4, the Contract Sum and Contract Time shall not be adjusted because of existing conditions affecting the Work.~~

§ 3.2.1.1 The Contractor shall perform all reasonable and customary non-destructive field investigation activities to the extent necessary to develop an informed understanding of the Project's existing conditions necessary to deliver the project within the Owner's anticipated design and construction milestone dates and budget for the Cost of the Work. The Contractor's field investigation activities shall include, but not be limited to, meeting with the Owner's facility and maintenance staff to review the applicable systems and known conditions. The Contractor shall provide Owner prompt written notice should it become aware of any reason why additional investigation of the existing conditions is warranted to develop the necessary informed understanding of the Project's existing conditions.

§ 3.2.1.2 The exactness of grades, elevations, dimensions, or locations of existing conditions given on any Drawings issued by the Architect, or work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner or change in Contract Time.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before ~~submitting pricing or estimates and/or~~ 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 Documents. 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-However, 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; the Contract Documents delegate design for that portion of the Work to the Contractor.~~ Contractor's failure to report to and requesting information clarifying such errors, ambiguities, inconsistencies, or omissions from the Architect shall result in interpretation of and resolving such errors, ambiguities, inconsistencies, or omissions in favor of the Owner.

§ 3.2.3 ~~The~~ With the exception of Contractor-designed Work, 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, Applicable Law,~~ 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.



§ 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 request a Change Order under Section 7.5 or submit Claims as provided in Article 15-15, as applicable. If the Contractor fails to perform the obligations of ~~Sections 3.2.2 or 3.2.3, the Contractor~~ Sections 3.2, the Contractor releases its right to any claim of increase in the Contract Sum and Contract Time and 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, ~~inconsisteneies-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.

§ 3.2.5 If the Contractor encounters concealed or unknown conditions that differ from those anticipated or expected in the Contract Documents, whether or not it is entitled to assert a Claim under Section 3.7.4, the Contractor shall promptly notify the Owner and Architect, as required in Section 3.7.4, in writing of such conditions so that the Architect and Owner can determine if such conditions revision to the Contract Documents or some other remedial action. The Contractor's failure to provide the required notification under this Section shall constitute a waiver of any Claim for additional time or compensation for any materially different conditions as set forth in Section 3.7.4.

### § 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 safety, 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, ~~sequencees-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 may~~ perform the Work using its alternative means, methods, techniques, sequences, or ~~proeedures-procedures~~ but shall remain responsible for the completed Work's conformance to the requirements of the Contract Documents.

§ 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-is responsible to the Owner for all acts and omissions of the Construction Team.~~

§ 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-inspect the Work as it is being performed until final completion and acceptance of the Project by the Owner to assure that the Work performed, and the materials furnished are in accordance with the Contract Documents and that Work on the Project is progressing on schedule. In the event that the quality control testing should indicate that the Work, as installed, does not meet the requirements of the Project, the Architect shall determine the extent of the Work that does not meet the requirements and the Contractor shall take appropriate corrective action, and advise the Owner of the corrective action.~~

### § 3.4 Labor and MaterialsLabor, Materials, Utilities, and Facilities

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all 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.

§ 3.4.1.1 The Contractor shall provide and maintain all temporary facilities in clean and sanitary condition acceptable to the Owner. The Construction Team may not use facilities in the building under construction or in other buildings on or near the Project site without the Owner's written permission.

§ 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. The Contractor will provide any information requested by the Architect related to its evaluation of a proposed substitution.

§ 3.4.2.1 By making requests for substitutions based on Subparagraph 3.4.2 above, the Contractor:

- .1 represents it has personally investigated the proposed substitute product and determined that the substitution is equal or superior in all respects to that which is specified;
- .2 represents it will provide the same warranty for the substitution that the Contractor would have provided for that which is specified;
- .3 certifies it presented any all costs or savings to the Owner associated with the requested substitutions and that the cost data presented, is complete, and includes all related costs, including but not limited to, the Architect's redesign costs and waives all Claims for additional costs related to the substitution that subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

§ 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 The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts, and any other contractors and individuals associated with the Project. The Contractor shall proactively minimize the likelihood of any strike, work stoppage, or other labor disturbance. Wherever applicable, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind which regulate, control, or distinguish what activities shall or shall not be included in the work of any particular trade.

§ 3.4.4 The Contractor shall coordinate the Work with the owners of known and ascertainable public and private utilities and shall relocate service lines and construct by-passes as needed to perform the Work. The Contractor shall protect all known or ascertainable utilities from its activities and shall promptly remedy all damage it may cause them, without an increase in the Contract Sum and Contract Time. In the event the Contract Documents require the Owner to coordinate a specific utility it does not own or control, the Owner shall only be obligated to make reasonable efforts to do so.

§ 3.4.4.1 To the extent practical, the Contractor may tie into the Owner's existing water, power, natural gas, and steam utilities without charge as to any usage in connection with the Work. In the event the Work occurs in an occupied building or facility, the Contractor shall give the Owner timely notice of its need for such services and the Owner shall make arrangements for the connection or activation.

§ 3.4.5 The Contractor shall permit the Owner, Architect, and representatives of governmental authorities to inspect and test the Work and shall account for such inspection and testing in its schedules.

§ 3.4.6 To the extent practicable, materials and equipment will be delivered to the Project site in original containers or wrappings. The Architect and the Owner have no obligation to inspect materials and equipment, but they may do so and may reject those that do not conform to the Contract Documents. The Architect or Owner's acceptance of non-conforming materials and equipment is only effective if done in a writing that expressly waives the non-conformity.

§ 3.4.7 There shall be no offsite storage of materials or equipment without the Owner's prior written consent in each instance. If the Owner consents to offsite storage, the Contractor shall meet the following criteria when storing materials and equipment stored offsite:

- .1 Title to materials and equipment shall be vest with the Owner upon payment under Section 9.3.2, and shall be documented as reasonably requested by the Owner;
- .2 All materials and equipment shall be insured for no less than the total replacement value;

- .3 Components must be assembled into completed units unless the Owner has given written permission otherwise;
- .4 The Architect and Owner may inspect the storage area, materials, and equipment at any reasonable time; and
- .5 The materials and equipment shall be (i) protected from diversion, destruction, theft, and damage, (ii) specifically marked for use in the Work, and (iii) segregated from other materials at the storage facility.

## **§ 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-defects~~ 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, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 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.

**§ 3.5.3** All written warranties shall be in the form and shall contain the terms required by the Contract Documents.

### **§ 3.5.4 Contractor and Subcontractors' Warranty Acknowledgment.**

The Contractor's submission of a Certificate of Substantial Completion constitutes the acknowledgment and delivery of the following Warranty Acknowledgement. Upon request by the Owner, the Contractor shall provide the Owner a separate signed copy of the following Warranty Acknowledgement. Additionally, the Contractor shall cause members of the Construction Team giving warranties that are contractually bound to the Contractor to execute and deliver to the Owner, the following Warranty Acknowledgment prior to or with the submission of a Final Application for Payment:

#### Warranty Acknowledgment:

(Contractor Name or Name of Subcontractor) ("Contractor") warrants that all of its Work complies with the requirements of the Contract Documents. If, within two (2) years after the date of Substantial Completion of the Work or designated portion of the Work, any of Contractor's Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct the Work at its sole expense promptly after receipt of written notice from the Owner. This two (2) year period shall be extended (i) with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of Contractor's Work, and (ii) with respect to warranty work for an additional two (2) year period following each correction. This obligation shall survive acceptance of the Work and termination of the Contract.

This Warranty shall be in addition to, and not in lieu of, the terms of any other warranty or longer period of obligation specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any other warranty provided to the Owner. Neither this warranty, nor any other warranty, shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time which any proceeding may be commenced.

### **§ 3.5.5 Post-Occupancy Assessment.**

As part of the Contractor's Work, the Contractor shall conduct a post-occupancy assessment eleven (11) months and twenty- two (22) months following the Date of Substantial Completion to assist the Owner in identifying and correcting non-conforming or faulty Work.

## **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, ~~use-commercial activities, local business, use,~~ and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations ~~concluded,~~ concluded whether or not yet effective or merely scheduled to go into ~~effect-effect,~~ unless the Owner is tax-exempt for those.

### § 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, trade permits, fees, licenses, connection fees, municipal performance bonds and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. All such fees are included in the Contract Sum. Notwithstanding the foregoing, the Charter Township of Waterford shall waive all applicable building permit fees.

§ 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~~ ascertain the applicability of, comply with, and give notices required by Applicable Laws, and lawful orders and all other requirements of public authorities pertaining to performance of the Work.

§ 3.7.2.1 The Contractor will ensure all members of the Construction Team are treated during the Project ~~without regard to their sex, race, creed, color, religion, age, height, weight, marital status, national origin, ancestry, sexual orientation, disability, or veteran status.~~ Such actions shall include, but not be limited to: 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 setting forth the provisions of this non-discrimination clause. This Section 3.7.2.1 supplements, but does not replace, obligations the Contractor may have under Applicable Law to prevent discrimination.

§ 3.7.2.2 The Contractor is responsible for the Construction Team's compliance with all Applicable Law including, but not limited to, those related to the employment or utilization of the Construction Team's workforce to carry out the Work. Accordingly, the Contractor is responsible that policies and procedures in place to ensure the Construction Team's compliance with Applicable Laws with regard to the Work.

§ 3.7.2.3 The Contractor will provide any verified information, certification, or assurance of compliance with Applicable Law that may be requested by Owner or any public authority. The Contractor will obtain this information from members of the Construction Team upon request by the Owner.

§ 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. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, Owner's Representative Consultant, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, liabilities, and expenses, including but not limited to professional and attorneys' fees, arising out of or resulting from its and the Construction Team's activities or performance of the Work in violation of Applicable Law. 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.

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are unknown and: (1) subsurface or otherwise concealed physical conditions that differ materially from those ~~indicated in the Contract Documents or (2) unknown physical conditions described in the Contract Documents;~~ (2) 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; and (3) not the Contractor's responsibility to ascertain under 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 ~~14 days after first observance of the forty-eight (48) hours after first observance of the conditions.~~ Only if the condition encountered meet the above requirements, if the Contractor has provided notice as required in this Section 3.7.4, and if the Contractor has fulfilled its obligations under Section 3.2, may the Contractor be entitled to an adjustment in the Contract Time or Contract Sum resulting from concealed or unknown 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 Contract Sum 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 15.15; except the Contractor will have released its right to an increase in the Contract Sum and Contract Time if it fails to follow the notice requirements of this Section 3.7.4.

§ 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. Any allowances, including any Subcontractor allowances, shall be approved by the Owner in writing and allowance funds may only be used for the established specific purpose, whether it be to address a specific unquantifiable issue or specific type potential unknown conduction.

§ 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; ~~and~~
- .3 whenever costs are more than or less than allowances, the Contract Sum ~~shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) may be adjusted accordingly by Change Order in 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-allowance; and~~
- .4 Once the scope of the Work for which an allowance was established is complete, the Contractor shall sign a Change Order returning any and all remaining allowance funds to the Owner.

§ 3.8.3 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 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 consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the ~~Contract, Contract or with its Guaranteed Maximum Price proposal, as applicable,~~ 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 reflect the Contractor's intended~~



approach to the execution of and completion of the Work. The schedule shall provide for the orderly progression of the Work to completion-completion, and shall not exceed milestone and Substantial Completion time current limits current under the Contract Documents. ~~The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.~~

§ 3.10.2 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.~~ construction schedule shall be in a detailed critical path method (CPM) format satisfactory to the Owner and Architect and shall: (i) graphically depict the coordination and sequence of all activities and events planned to occur during performance of the Work; (ii) identify each phase of construction and occupancy and (iii) include milestone and Substantial Completion dates. The construction schedule shall be broken into work areas to provide for a clear identification of the planned progress of the Work. Unless it is impractical, the duration of each activity shall not be greater than 30 calendar days. The construction schedule shall make reasonable allowance for delays caused by such things as labor scarcity, weather, local jurisdictional work restrictions, and building official inspections and shall depict the following:

- .1 Work durations in calendar days;
- .2 restrictions and constraints stated in the Contract Documents;
- .3 milestone and other intermediate completion dates set by the Contract Documents;
- .4 actual start and finish dates and remaining durations for each activity;
- .5 reasonable time for needed approvals by the Owner, Architect, or other agency or authority;
- .6 reasonable time for Owner, Architect, or other agency or authority inspections and/or tests where required by the Contract Documents;
- .7 the work of separate contractors or the Owner;
- .8 a legend for each report or chart which clearly identifies how to interpret each;
- .9 any phasing of activities or sequences that are needed to complete the Work; and
- .10 fabrication and/or ordering activities for critical or long lead materials for the Project.

§ 3.10.4 In management of the construction schedule, the Contractor shall:

- .1 meet at least bi-weekly with the persons providing labor or materials under each trade package to review their progress and take appropriate action to maintain the construction schedule;
- .2 update the construction schedule with the current status of the Work and the Contractor's plan for completing it (i) monthly to compare actual progress with projected progress; (ii) within seven days of an event that impacts the critical path, (iii) monthly updates shall be submitted with the pay application and (iv) at any other reasonable time if requested by the Owner;
- .3 develop recovery schedules when critical path, milestone, or Substantial Completion dates are or may be at risk of being missed;
- .4 not place Owner activities on the critical path without its approval;
- .5 with its submission of the baseline schedule and with each update, provide the Owner and Architect with a narrative describing the Project's progress, Project challenges, any impacts to critical and near-critical path activities, if any, and the Contractor's forecast of upcoming Work;
- .6 provide the Owner with copies of the schedule and all updates in their native electronic format; and
- .7 submit copy of the final, as-built construction schedule to the Owner upon final completion of the Work.

§ 3.10.5 Durations of activities for the Owner's forces and the Owner's Separate Contractors on the Contractor's construction schedule are not binding on the Owner unless they have been accepted in writing.

§ 3.10.6 Because schedule float is a resource to be shared for the benefit of the Project, the Owner or the Contractor may use float as it may be available.

§ 3.10.7 The Owner's or the Architect's review of the Contractor's schedules shall not constitute or imply the acceptance of them or relieve the Contractor of responsibility for the means, methods, sequences, techniques, or procedures used in the performance of the Work.

### **§ 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.

**§ 3.12.6** The Contractor is responsible for the content of all submittals. 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, and (4) confirmed constructability of the Work described in them. The Contractor's submittals shall clearly identify both the person who undertook the review required by this Section 3.12 and the date of the submittal's transmittal to the Architect.

**§ 3.12.6.1** The Contractor shall develop and keep current a submittal log that is coordinated with the submittal and construction schedules.

**§ 3.12.6.2** Submittals describing manufactured equipment must be clearly marked to fully define the intended model number, configuration, and other applicable product information.

**§ 3.12.6.3** The Contractor shall notify the Owner and the Architect in writing if any submittals describe Work that diverges from the requirements of the Contract Documents. The notice shall identify each and every divergence.

**§ 3.12.6.4** The Contractor shall furnish to the Architect for review when requested, or when required by the Contract Documents, Samples of all materials and finishes to be used in the execution of the Work. Such Samples shall be of sufficient size to be representative and the required number of them shall be submitted before the Work utilizing the materials they exemplify is commenced and in ample time to permit examination thereof.



§ 3.12.6.5 The Architect and Contractor will establish and adhere to the procedures and requirements for the timing, transmission, and review of Submittals, Samples, and Shop Drawings. No such protocols agreed upon by the Architect and Contractor shall in anyway relieve the Architect or any member of the Construction Team of any obligations or duty to the Owner, impose any obligation upon the Owner, nor give rise to any Additional Services of the Architect or any change to the Contract Sum or Contract Time. The Contractor and Architect shall be responsible for the costs of their failure to adhere to the established protocols. Failure by the Contractor to submit a Submittal, Sample, or Shop Drawing in conformance with the established protocols, or to document the agreed up on timeframe for response and the timing of the submission and response, shall constitute a waiver of any claim for change in the Contract Time or Contract Sum resulting from the Architect's delayed review or response to a Submittal, Sample, Shop Drawing.

§ 3.12.6.6 The Contractor shall review the Architect's comments on submittals that have been returned, may seek clarification through a request for information if necessary, or, if the Contractor concurs, shall make such corrections, and re-submit the submittal. When noted on the submittals or requested by the Architect, the Contractor shall resubmit corrected submittals to the Architect for final check and review. The Contractor shall direct specific attention, in an attached writing or on the 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 review of a resubmission shall not apply to such revisions.

§ 3.12.6.7 Except for minor changes of Work expressly authorized by the Architect in writing, the Architect's approval, corrections, or comments on submittals do not constitute a Modification. In the event the Contractor believes the Architect's corrections or comments on submittals effect a change in the Work, the Contractor shall submit notice pursuant to Section 7.5 before implementing the corrections or comments.

§ 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.~~ Architect has completed its review of the respective submittal.

§ 3.12.8 The Work shall be in accordance with ~~approved submittals~~ submittals for which the Architect's review has been completed; except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's review or 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, 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 review or 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.~~ **§ 3.13.1** The Contractor shall confine operations at the site to times of day and areas permitted by Applicable Law, lawful orders of public authorities, and the Contract Documents. To the extent reasonably possible, the Contractor shall minimize the impact of the Work on neighboring properties and shall keep public areas adjacent the site free of debris, building materials, and equipment.

**§3.13.2** The Contractor shall maintain a clean and orderly site and shall not encumber it with unnecessary materials or equipment. After temporary facilities and equipment are no longer required for the Work they shall be promptly removed. The Contractor shall protect construction materials and equipment stored at the Project site from weather, theft, damage, and all other casualty and bears the risk of loss to them. This Section 3.13 does not prevent the Contractor from recovering sums paid by the Owner's property insurer for their loss.

**§ 3.13.3** No member of the Construction Team shall erect any sign on the Project site without the Owner's prior consent.

**§ 3.13.4** The Contractor shall not, without the Owner's prior written approval, permit the Construction Team to use any existing facilities at the Project site, including, without limitation, lavatories, entrances, eating, and parking areas. The Contractor shall adhere to the Owner's site use policies and shall suggest reasonable alternatives in the event the Contractor believes those policies impact the progress of the Work. The Contractor shall restore any existing property, facility, or conditions, whether or not owned or controlled by the Owner, it uses to support its performance of the Work to the facility's pre-use condition. To the extent reasonably possible, the Contractor shall minimize the impact of its operations on such things as traffic control devices, landscaping, and other features existing on the Project site and shall restore that which is damaged by its activities.

**§ 3.13.5** In the event the Work occurs in an occupied building or facility, the Contractor shall not disrupt the operation, access or use of any portion of the building or facility, any building system, or utility service without obtaining the Owner's prior written consent after having given the Owner seven days' written notice of the planned disruption. The notice shall detail the exact nature and duration of such interruption, and the area affected. The Contractor's failure to comply with the notice provisions of this Section 3.13.5 is a waiver of any right to an increase in the Contract Sum and Contract Time to which the Contractor might otherwise be entitled as a result of the Owner's failure to give consent.

**§ 3.13.6** The Contractor shall provide all security necessary to safeguard the building, tools, materials, and Work. In the event the Work occurs in an occupied building or facility, the Contractor shall ensure all members of the Construction Team shall cooperate with the Owner's security personnel and comply with the Owner's security requirements, which may include badging and enumeration of personnel working on site. The Owner may bar access to any individual for reasonable security reasons and may restrict the location of entries to the Work that may be used by members of the Construction Team.

**§ 3.13.7** The Contractor shall control dust, smoke, noise, and fumes to avoid creation of a nuisance and to comply with Applicable Law.

**§ 3.13.8** The Contractor shall take all necessary precautions to guard against and eliminate damage and disruption to the Work, the Project, and neighboring property. The Contractor's health and safety plan required by Section 10.1.2 shall include a detailed fire prevention, protection, and suppression plan that is acceptable to the Owner and complies with Applicable Law and lawful orders of public authorities. The Contractor shall coordinate with the applicable

public authorities and maintain free access to the Project site for emergency equipment at all times.

### **§ 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** Only tradespersons skilled and experienced in cutting, fitting, and patching shall perform such Work. An appropriate member of the Construction Team shall do all cutting, fitting, or patching on the Work that may be required to make its several parts come together properly and fit the Work to receive or be received by work of other contractors shown by, or reasonably implied by, the Contract Documents for the completed Project. An appropriate member of the Construction Team shall repair or otherwise make good all such cutting, fitting, or patching after the required Work has been completed as the Architect may direct.

**§ 3.14.4** The Contractor shall not cut or otherwise alter any portion of any structure of which the Work is a part of or to which the Work is attached without in each instance having first submitted a Shop Drawings accurately locating each such cut or alteration. The Architect's approval of such Shop Drawings must be obtained prior to making any such cut or alteration.

### **§ 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.

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

### **§ 3.16 Access to Work**

The Contractor shall provide the ~~Owner and Owner, the Owner's consultants and separate contractors, and the~~ 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 shall ~~indemnify and hold harmless the Owner, defend, indemnify, and hold harmless the Owner and its officials, employees, agents, consultants, volunteers, its Owner's Representative Consultant, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, liabilities, and expenses, including but not limited to professional and 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), its and the Construction Team's activities related to the performance of the Work,~~ but only to the extent caused by the negligent acts or omissions of ~~the Contractor, a Subcontractor, the Contractor and the~~

Construction Team, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. 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. In no event shall the Owner indemnify the Contractor or any third party.

**§ 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** The Contractor shall pay all professional and attorney fees incurred by the indemnitees to enforce the provisions of this Section 3.18.

### **§ 3.19 Record Documents**

**§ 3.19.1** The Contractor shall maintain at the Project site keep updated the Record Documents, which include the Contract Documents, Change Orders, proposed or requested Change Orders, Construction Change Directives, the Record Drawings, construction schedules, reports, requests for information and responses to them, submittals and responses to them, logs, meeting minutes, notices, maintenance and operating manuals, and other documents generated by the Construction Team in the performance of the Work. As part of the Record Documents, the Contractor shall maintain records of principal building layout lines, elevations of the bottoms of footings, utility inverts, Project floor levels and key site elevations certified by a qualified surveyor. Internal memoranda or reports, privileged communications, documents with incidental references to the Work, and documents which discuss multiple projects are not Record Documents.

**§ 3.19.2** The Contractor shall make the Record Documents available to the Owner and the Architect for inspection and copying at all times during performance of the Work.

**§ 3.19.3** The Record Drawings depict the Work as it is actually built. The Contractor shall prepare and update them continuously during the prosecution of the Work. The Contractor shall maintain the Record Drawings showing: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (v) such other information as the Owner and Architect may reasonably request. The Contractor shall also be responsible for providing record sitework drawings that are required by the authority having jurisdiction in order to close out the Project.

**§ 3.19.3.1** At Substantial Completion of the Work, the Contractor shall deliver the Record Drawings, approved shop drawings and submittals, requests for information and responses, operation and maintenance manuals, and other Record Documents requested by the Owner to the Owner neatly organized and indexed in both bound hard copy and electronic format. The Contractor shall be permitted to retain a copy of the Record Documents for its own use after the Work is completed and, in any event, the Owner shall continue to provide the Contractor with access to them for to inspection and copying.

### **§ 3.20 Warranties and Manuals**

**§ 3.20** Unless the Contract Documents require otherwise, the Contractor shall bind and turn over to the Owner in electronic and hard copy form a set of manufacturers' warranties and operating and/or maintenance manuals, instructions or schedules for all equipment and special materials requiring such. Such information will clearly categorize and index each piece of equipment and material included and shall be clearly marked noting "project specific" equipment, model numbers, and other applicable information. Such manuals will be collected and organized by the Contractor and submitted to the Owner at one time, as a condition of Substantial Completion.

### **§ 3.21 Project Information System**

The Contractor shall establish and maintain a Project Information System for organizing, preserving, and tracking Project documents, requests, and other administrative matters including, but not limited to, submittals, requests for information, project accounting, and change order requests. The Contractor shall provide the Owner, Architect, and

the Owner's Representative Consultant with access to the Project Information System. Upon completion of the Project, the Contractor shall provide the Owner with an archival copy of the information contained on the Project Information System. The Contractor shall maintain the information in the Project Information System for the applicable statute of limitation or statute of repose.

## 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 to administer the Contract 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 notice to the Contractor.~~

### § 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. Owner makes final payment, and, with the Owner's concurrence, during the period for correction of the Work under Section 12.2.~~ The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Architect does not have authority to modify the Contract Sum or Contract Time or to direct changes in the Work that may prompt the Contractor to seek a change in Contract Sum or Contract Time.

§ 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~~ 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~~ 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~~ communication 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 to 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. Documents or that the Architect believes will not conform when completed.~~ 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~~ 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. The Architect's failure to reject non-conforming Work does not constitute acceptance of it.

§ 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 or approval 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 or approval of a submittal 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. Except for minor changes to the Work expressly authorized by the Architect in writing, the Architect's approval does not constitute a Modification.

§ 4.2.8 The Architect will ~~prepare~~ prepare, or if prepared by the Contractor or Owner the Architect will review, Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. The Architect's signature on any Change Order certifies that the Architect has reviewed all changes to the Work set forth therein and that Contract Documents, as modified by the Change Order, are consistent with the Architect's obligations under the agreement between the Owner and Architect.

§ 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~~ receive, compile, review, confirm the completeness of, 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~~ responsibilities, and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide 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. Subject to Section 7.5, the Contractor shall implement directions given with the Architect's response.

§ 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 ~~The Subject to the Owner's written approval,~~ the Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 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,~~ appropriate and subject to Article 7, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 The Architect and Contractor recognize that the timely responses to requests for information from Architect is important to the success of the Work. Accordingly, Contractor shall promptly meet after the execution of the Contract to establish with the Architect in writing protocols and mutually acceptable time limits for the Architect's responses regarding requests for information from the Architect. Such agreed upon time limits shall not give rise to a change in

the Contract Time. The Architect shall be responsible for the cost of delays, if any, attributable to its failure to provide responses in the time established by the Architect and Contractor. Failure by the Contractor to document the agreed up on timeframe for response, or the timing of the request and response, shall constitute a waiver of any claim for change in the Contract Time or Contract Sum resulting from the Architect's delayed response to the request for information.

§ 4.2.16 The Contractor will compensate the Owner for fees demanded by the Architect for excessive review of submittals and for reviewing requests for information by the Contractor that the Architect legitimately believes to lack merit.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. 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** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Contractor shall provide the Owner or Architect information regarding such entities as reasonably requested. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity 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.

**§ 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work and either provided a price within the Owner's budget or Stated Limitation on the Cost of the Work, as applicable, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.2.5 The Owner may enter into agreements with trade contractors for portions of the Project and assign one or more of the agreements to the Contractor, which the Contractor shall accept unless reasonable and particularized objection is promptly made in writing. With any such assignment, the agreement shall become a Subcontract, the trade contractor shall become a Subcontractor, and the work being performed shall become Work for which the Contractor is responsible.

### **§ 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 all activities related to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice any 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.

**§ 5.3.1 In addition to the requirements of Section 5.3, each form of subcontract agreement shall:**

- .1 require timely submittal of invoices and applications for payment and supporting documentation;
- .2 unless precluded by the Owner's property self-insurance insurance, waive of rights of subrogation for damages caused by fire or other perils covered by the property insurance;
- .3 name the Owner as an intended third-party beneficiary; and
- .4 recognize the contingent assignment of the subcontract under Section 5.4

**§ 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

- .1 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.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights ~~and obligations~~ under the subcontract.

**§ 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.~~ assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

**§ 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.~~

**§ 5.5 Subcontractor Insurance.** Unless excused on a case-by case basis, all Subcontractors and Sub-subcontractors shall procure the insurance coverage required of the Contractor by the Contract Documents. The Contractor shall obtain required documentation, shall review it for compliance with the requirements of the Contract Documents, and shall report it to the Owner. No Subcontractor or Sub-subcontractor shall perform any portion of the Work or have a presence at the Project site without providing satisfactory proof of insurance coverage to the Owner. The Contractor shall monitor the Subcontractors' and Sub-subcontractors' insurance certificates to ensure coverage remains current.

**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-right, but shall have no obligation, 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.~~ Contractors. Owner does not waive its right to subrogation.

**§ 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 shall coordinate the Work being performed by the Construction Team with the Owner's forces and each Separate~~ 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. account for the work of the Owner's forces and Separate Contractors on its construction schedule and shall make any revisions deemed necessary after a joint review.~~ The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. Whenever the Contractor's Work is dependent upon the work of the Owner or the Owner's Separate Contractors, the Contractor shall notify the Owner of such condition with sufficient time to prevent any delays to the progress of the Work. The Contractor shall promptly notify the Owner in writing, and in accordance with the Contract's requirements, upon becoming aware that Separate Contractor actions will in any way compromise the Contractor's ability to meet its responsibility under the Contract Documents.

**§ 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, 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, apparent~~ provided it has thoroughly examined the visible portions of any work that the Contractor's Work may be dependent on or interconnected with.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs ~~for its own forces or~~ that are payable to a Separate Contractor because of the Contractor's delays, improperly timed ~~activities, 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, construction provided the Contractor has taken every reasonable step to mitigate any Contractor costs and delays and gives the Owner notice in accordance with the applicable provision of the Contract Documents.~~

**§ 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, the Owner and Architect deem~~ responsible in their reasonable discretion.

## 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 ~~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 may be issued~~ by the Owner ~~and or~~ 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 alone.~~ Owner or Architect. The Contractor may request a Change Order in accordance with Section 7.5.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with ~~changes authorized~~ Modifications 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 The Contractor shall maintain a log of all changes in the Work, Contract Sum, or Contract Time that have been proposed or requested by the parties, all Change Orders, and all other Modifications. The log shall include the date the change was first proposed, a brief description of the change, an estimate of the cost or savings realized by the contemplated change, an estimate of the change's impact on the critical path, and any adjustment in the Contract Sum and Contract Time resulting from a Change Order or Modification that implements the change. A Construction Change Directive shall be recorded as such on the log. This log must be updated and presented to the Owner least bi-weekly and/or via a collaborative Project Information System. This log must also include projected changes in the Work through Final Completion of the Project, enabling the Contractor and Owner to manage the contingency funds for the Project.

§ 7.1.4.1 In order to facilitate the timely submission and processing of proposed changes described in Article 7.1.4, the Contractor and Architect shall establish an efficient process for their review and shall reserve for the Owner an appropriate amount of time for the review and approval of proposed Modifications. The Contractor shall utilize a collaborative Project Information System to manage the Modification process.

§ 7.1.5 The Contractor shall maintain accounting records detailing the cost of all changes in the Work and will permit the Owner to inspect and copy them upon request.

§ 7.1.6 In no event shall the Contractor be entitled to receive, and the Contractor hereby waives the right to receive any payment or any extension of time for additional or changed Work, whether partially or fully completed or simply proposed, unless such additional work is authorized by a written Change Order or Construction Change Directive signed by the Owner, nor shall the Contractor be obligated to proceed with any such work. Change Orders and Construction Change Directives may only be accomplished using a form substantially similar to an AIA G701 or G714 respectively or, if applicable, a form attached to the Contract. No course of conduct or dealing between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim for an adjustment to the Contract Sum or Contract time. For an abundance of clarity, no Architect's bulletin nor Contractor Change Order Request or Change Log, even if signed or otherwise agreed to by the Owner, shall be binding or be given effect unless incorporated into a signed Change Order or Construction Change Directive in accordance with this Section.

### § 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 Written agreement by the Owner, Architect, and Contractor on any Change Order shall constitute a final settlement of and a waiver of and permanent bar to all claims by Architect or Contractor relating to the change in the Work which is the subject to the Change Order, including all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the Contract Time. No blanket reservation for the Contractor of any right to bring further claims for the subject of the Change Order, whether or not included in the Change order, shall be given effect. A signed Change Order constitutes the whole fully integrated agreement between the parties with respect to the subject matter contained therein.

### **§ 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 or the Contractor's pace of performing 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 or order changes in the Contractor's pace of performing the Work, the Contract Sum being adjusted in accordance with the actual cost of implementing the direction and the Contract Time being adjusted in accordance with the actual extension or reduction in the construction schedule's critical path.~~

**§ 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~~ Architect, in consultation with the Owner and Contractor, shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the ~~change~~ Construction Change Directive, including, in case of ~~an increase a change~~ 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~~ amount for overhead and profit not to exceed ten percent on Work self-performed by the Contractor and five percent for Work performed by Subcontractors. 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; the following which shall not exceed the then current market rate for the Project location:~~

- .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, 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 and Owner 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~~Architect and Owner. 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~~increase or reduction, if any, with respect to that change. The reduction in the Contract Time for a deletion of Work shall be proportionate to the reduction in parts of the Work that are critical path activities on the current construction schedule.

§ 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~~Architect, in consultation with the Owner and Contractor, 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. The Owner may audit the Contractor's books and records to verify the cost of Work performed under a Construction Change Directive.

§ 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~~all, or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The ~~Architect~~Architect, in consultation with the Owner, 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 Owner and Architect in accordance with Sections 7.5, 15.1.5, and 15.1.6 and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Owner's or Architect's order for a minor change without prior notice to the Architect 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.

#### § 7.5 Contractor Change Order Requests

If the Contractor believes a change in the Contract Sum or Contract Time is warranted and not otherwise covered in an prior Change Order, the Contractor shall issue a written request for a Change Order to the Owner and Architect. The request shall include all reasonably ascertainable, as well as the contractual basis for the Change in Contract Sum or Contract Time. Unless it involves an emergency requiring immediate action to protect life or property and where the Contractor has provided written notice to the Owner and Architect within 12 hours, the Contractor shall issue the request and wait for the Owner's response before starting the affected Work. In no case shall the Contractor issue a request or be entitled to Modification later than twenty-one (21) days after the date the Contractor discovers or should have discovered with the exercise of appropriate diligence, the pertinent act, error, omission, or circumstances giving rise to the requested change. In the event the Contractor disagrees with the Owner's response, the Contractor may pursue a Claim under Article 15 and subject to the requirements of Section 15.1.3. The Contractor's failure to strictly follow the procedure regarding the timing of requests for Change Orders shall operate as a waiver and release of any right to an increase in the Contract Sum and 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 all milestone dates and Substantial Completion within the Contract Time. The Contractor shall not, without the Owner's prior approval, reschedule or re-sequence the Work so that an action, approval, or activity of the Owner moves onto the critical path or otherwise becomes critical to the Contract Time so long as such action, approval, or activity would not in fact have been critical but for the rescheduling or re-sequencing.

§ 8.2.4 Should the Contractor fail, refuse or neglect to supply sufficient workers or to cause the delivery of equipment and materials promptly to prevent delay, or fail in any material respect to commence and execute the Work diligently in accordance with the Contract Documents, or if the Work falls behind schedule, the Owner may require the Contractor to take additional measures and to have the members of the Construction Team do likewise, all at no additional cost to the Owner. Such Additional Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require additional measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule and subject to the following:

- .1 The Contractor shall not be entitled to an adjustment in its compensation in connection with Additional Measures required by the Owner under or pursuant to this Article 8 except as specifically provided in Section 8.3.2 or in a Change Order or Construction Change Directive.
- .2 The Owner may exercise the rights furnished it under or pursuant to this Article 8 as frequently as necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.
- .3 Subject to reasonable prior notice and opportunity to cure, and except to the extent caused by Owner Delay, the Owner shall also have the right to offset against any amounts then or thereafter due to the Contractor, or to be reimbursed by the Contractor for, any costs incurred as a result of an increase in the Owner's own labor force or for overtime, Saturday, Sunday, and/or holiday work as a result of implementing Additional Measures for which the Contractor is responsible to pay.

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an a wrongful 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 labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; that are both beyond the Contractor's control and are reasonably unforeseeable; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, and Owner determines in their discretion, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine time as the Contractor demonstrates to the Owner's reasonable satisfaction an unavoidable impact to the construction schedule's critical path.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Except as provided by Article 7, the Contract Sum shall only be increased on account of delay when the Contractor demonstrates to the Owner's reasonable satisfaction an unavoidable impact of more than seven consecutive days to the construction schedule's critical path and that the delay is caused by a wrongful act or negligence of the Owner or Architect, of an employee of either, or of a Separate Contractor. The increase in the Contract Sum shall not exceed the Contractor's direct, actual cost of delay calculated in accordance with the Contract Documents but without overhead, or mark-up. In no event shall the Contractor, or any member of the Construction Team, be entitled to compensation or recovery for any damages in connection with delay, including, without limitation, consequential damages, lost opportunity costs,

impact damages or other similar remuneration. The Contractor hereby expressly waives and covenants and agrees not to assert any claims against the Owner for any damages, costs, losses or expenses of any nature whatsoever which any member of the Construction Team may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any act or omission of the Owner, its representatives or agents, it being understood and agreed that their sole and exclusive remedy in such event shall be an extension of the Contract Time and/or an adjustment to the Contract Sum to the extent provided in this Section 8.3.2.

§ 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.

§ 8.3.3 Neither the Contract Sum nor the Contract Time shall be increased:

- .1 to the extent float in the schedule may accommodate the delay, regardless of the party responsible for the delay;
- .2 when the delaying event affects the schedule's critical path concurrently with an event the Contractor is responsible for;
- .3 when the Owner or Architect exercise a right granted them by the Contract Documents to manage deficiencies in the Contractor's performance;
- .4 when the Contractor has failed to identify and avoid a reasonably foreseeable delay;
- .5 to the extent the Contractor has failed to mitigate the effect of the delay; or
- .6 when the Contractor has failed to give the Owner and Architect written notice of a critical path delay within twenty four (24) hours of its occurrence and failed to give the Owner and Architect an opportunity to resolve the delay.

§ 8.3.4 After providing reasonable notice to the Contractor, the Owner may implement any remedy granted by the Contract Documents to address Contractor-caused delay(s), including remedies permitted by Section 2.5, Section 6.1, Section 7.3, and Section 9.5.

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

§ 8.3.6 This Section 8.3 does not preclude recovery of damages for delay by the Owner 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 in relation to each portion's actual cost and in sufficient detail to accurately quantify completion 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, Architect, and shall be approved by the Owner. This schedule, unless objected to by the Architect, Architect or Owner, 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. Owner's Representative Consultant and Architect a pencil drawing



of the proposed application for payment for Costs incurred during that month. Any invoices for Costs that are not included in such pencil draw will be held over until the next monthly pay period. The amount agreed to at the pencil draw review meeting shall be processed and submitted as a payment application according to the Contract Documents. 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, 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, supplier unless such Work has been performed by others whom the Contractor intends to pay.

§ 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, as required by Section 3.4.7, 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 Owner shall not be required to pay for unassembled materials, such as mill steel, extrusions for windows, and incomplete assemblies.

§ 9.3.5 The Contractor's first Application of Payment is considered incomplete unless, in addition to the requirements described below, all of the following items are also included with the Application of Payment: (i) Performance and Payment Bonds, if required; (ii) Certificate of Insurance, as required; (iii) Affidavits that the surety and insurance company or companies meet the requirements in Article 11.7; (iv) CPM Schedule for the Project; (v) Completed Schedule of Values for the Project.

Each Application for Payment shall be in the form of an AIA G702 and G703 unless otherwise approved by the Owner and shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- .1 a properly executed and notarized affidavit or sworn statement in statutory form (or if there is no applicable statutory form, in a form acceptable to the Owner) from the Contractor and all Subcontractors attesting to the amounts previously paid, amounts currently due, and amounts expected to become due to those providing labor or materials for the Work to them under a contract;
- .2 properly executed unconditional releases of lien and claim establishing payment or satisfaction of all obligations to those providing labor or materials for the Work for which the Owner has previously made payment; except the application for Final Payment is governed by Section 9.10.2;
- .3 properly executed conditional releases of lien and claim for the Work for which payment is being requested, except the application for Final Payment is governed by Section 9.10.2;
- .4 An updated schedule of values, which unless objected to by the Architect shall be used as a basis for reviewing the Contractor's Application for Payment.
- .5 A narrative describing in detail any changes to the schedule of values.
- .6 An updated schedule with written narrative summarizing the progress of the Project, including behind schedule Work that may adversely affect the critical path of the Work. If such behind schedule Work would or could potentially affect the timely completion of the Work, the Contractor must also include a recovery plan describing in sufficient detail of overtime, multiple shifts, and any other measures

- necessary to complete the Work within the Contract Time.
- .7 Initial or updated insurance documentation and/or bond documentation evidencing compliance with the requirements of the Contract Documents.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; 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;~~
- ~~.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or~~
- ~~.7 repeated failure to carry out the Work in accordance with the Contract Documents. Certification of any Application for Payment failing to strictly conform with the requirements of this Article 9 shall be withheld as incomplete. The Architect shall inform the Contractor and Owner of the deficiencies in the Application for Payment.~~

§ 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. 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 any loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2 or because of

- .1 defective or non-conforming Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, including claims for non-payment by members of the Construction Team, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials, or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed by milestone dates or within the Contract Time, and that the unpaid balance of the Contract Sum would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to perform any obligation of the Contract Documents.

**§ 9.5.3** When ~~the reasons for withholding certification are removed, certification will be made for amounts previously withheld;~~ 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. If the Contractor disputes any good faith determination by the Owner with regard to any Certificate of Payment, or amount paid by the Owner in respect thereof, the Contractor shall nevertheless expeditiously continue to prosecute the Work while such dispute is being resolved in accordance with the provisions of Article 15. Where the Architect is made aware that it has Certified an Application for Payment in error based on an incomplete or incorrect Application for Payment, the Architect shall rescind and withhold its Certification pending correction of the Application for Payment.

**§ 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.~~ When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.5** 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, or that the Owner believes there is a reasonable risk the Contractor may fail 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, Documents~~ and shall so notify the Architect. ~~Notwithstanding the Architect's Certification, the Owner may withhold payment, in whole or in part, if the Application for Payment is incomplete in any way or the Owner makes a reasonable determination that the Application for Payment is inaccurate pending the resolution of a Claim in accordance with Article 15.~~

**§ 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~~ Payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held in trust 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 Unless required otherwise by statute, 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.~~ Contractor or require payment to Subcontractors or suppliers when the terms of their agreement with the Contractor permit the Contractor to withhold it.

§ 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 its Architect and Owner's Representative Consultant from all loss, liability, damage, or expense, including joint check fees, lien discharge bond premiums, 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 ~~request by the Owner, the Contractor shall immediately discharge any such lien at its own cost.~~ 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. ~~payment affecting title to the Work or Project, the Owner and Contractor shall notify the other of the lien or claim. The Contractor shall pay all attorney fees incurred by the Owner to enforce the provisions of this Section 9.6.8.~~

§ 9.6.9 Owner shall retain out of each progress payment a "Retainage" as provided in the Contract Documents. Retainage will be paid upon Final Completion and acceptance of the Work in accordance with Section 9.10. Upon mutual agreement of the Owner, the Architect and the Contractor, payment in full may be made to Subcontractors whose Work is fully completed during early stages of the Project.

## § 9.7 Failure of Payment

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 Owner is in default of making payment to the Contractor in accordance with the Contract Documents for more than thirty consecutive days,~~ 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.

## § 9.8 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~~; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, or any other certifications necessary for the beneficial occupancy or intended use of the Project.

§ 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 ~~obtained, completed,~~ or corrected prior to final ~~payment.~~ payment along with a schedule for completing them. 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.



§ 9.8.2.1 The Work shall not be considered ready for Substantial Completion review until testing and commissioning of all systems included in the Work is complete and all systems are operational in accordance with the Contract Documents and finishing the Work will not materially interfere or hamper the Owner's or Project occupant's normal operations. All occupational permits by governmental authorities with jurisdiction are also required, and temporary permits are only allowable with the Owner and Architect's written consent.

**§ 9.8.3** Upon receipt of the Contractor's ~~list, list and schedule,~~ the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially ~~complete, complete and the schedule for completing the Work is acceptable.~~ 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.

**§ 9.8.4** When the Work or designated portion thereof is substantially ~~complete, complete and the Contractor's schedule for completing the remainder of it is acceptable to the Owner and Architect,~~ the Architect will prepare a Certificate of Substantial Completion utilizing an AIA G704 form 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. Such payment shall be adjusted for the Owner may, in its sole determination, withhold any amount of retainage it deems sufficient to secure completion or correction of~~ Work that is incomplete or not in accordance with the requirements of the Contract Documents. Documents and to secure performance of any outstanding obligation of the Contract. Substantial Completion shall not be considered obtained until the Certificate of Substantial Completion is accepted by the Owner, which acceptance may be withheld if the Owner reasonably believes the Certificate of Substantial Completion was issued in error.

**§ 9.8.6** The Owner's use of the Work, payment of retainage, final payment, or a Certificate of Substantial Completion do not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **§ 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.

**§ 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.

§ 9.10.2 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~~, Owner, and (7) any outstanding Record Documents have been delivered to the Owner and Architect. 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, liens~~, 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 as unsettled at the time of final Application for Payment.

§ 9.10.6 Contractor will provide attic stock materials as required by the Contract Documents. Materials shall be boxed, labeled, and stored as directed by the Owner.

§ 9.10.7 If the aggregate of previous payments made by the Owner exceeds the amount due to the Contractor, the Contractor shall immediately reimburse the difference to the Owner.

## § 9.11 AUDITS BY THE OWNER

§ 9.11.1 The Contractor agrees that the Owner or any of its duly authorized representatives shall, until the expiration of the record retention period (as described in Section 9.11.2), have access to and the right to examine where pertinent to verifying the Cost of the Work or other items reimbursed to Contractor under the Agreement on the basis of costs,

books, documents, records, contracts, correspondence, instructions, receipts, vouchers, purchase orders, memoranda, papers, and all other records of the Contractor related to the Agreement for any reason.

§ 9.11.2 The Contractor shall maintain in accordance with generally accepted accounting principles separate records and accounts of its Services and transactions on behalf of the Owner in connection with the Work and shall make such records and accounts available to the Owner for inspection and audit during normal business hours and upon reasonable prior notice. Records shall be kept in such form and detail as the Owner may reasonably request. Such records shall include time sheets, invoices from the Contractor and its Subcontractors memoranda and analyses in support of management decisions, and such other primary records as necessary to support and justify all business conducted in connection with the Work, but shall not include internal memoranda or reports, communications, or discussions with incidental references to the Work or documents which discuss multiple projects. Such records will be kept by the Contractor for a period not less than seven (7) years.

§ 9.11.3 The Contractor shall include in all its Subcontracts under the Agreement a provision to the effect that the Subcontractors agree that the Owner or any of its duly authorized representatives shall, until expiration of three (3) years after Final Payment under the Subcontracts and Supply Agreements, have access to and the right to examine where directly pertinent to verifying the cost of change orders or other items reimbursed to such Subcontractor on the basis of cost, books, documents, papers, and records of such consultants, involving transactions related to the Work.

## **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. § 10.1.1 The Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and the Project site.

§ 10.1.2 The Contractor shall develop and implement a written health and safety plan that addresses the requirements of this Article 10 and complies with all Applicable Law. The Contractor shall provide the Owner a copy of the health and safety plan prior to commencement of Work and shall include it with the Record Documents. The Owner has no duty to review the plan and shall assume no duty by doing so. The plan shall be included in all bidding documents issued by the Contractor, and the requirements of the plan shall be applicable to all members of the Construction Team.

### **§ 10.2 Safety of Persons and Property**

§ 10.2.1 The Contractor shall take ~~reasonable-adequate~~ precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- 1 ~~employees on the Work and all individuals at the Project site as well as~~ other persons who may be affected ~~thereby by the Contractor's activities in connection with performing the Work;~~
- 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,~~ all notices and requirements of Applicable Law 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-adequate~~ 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-flammable, explosive,~~ or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor ~~shall address the care of them in its health and safety plan and~~ shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When in the course of the Work use or storage of explosives or other hazardous materials or equipment or



unusual construction methods are necessary, the Contractor shall give the Owner reasonable advance notice.

- .1 No explosives will be permitted on the Owner's premises unless written permission is given by the Owner not less than 72 hours in advance of the time of delivery of such explosives. All risks, regardless of the Owner's approval, associated with the storage, handling and use of explosives are solely borne by the Contractor, as are any costs associated with damages, injuries or losses arising out of the use of such explosives.
- .2 The use of disposal or flammable liquids or other combustible materials shall be handled in accordance with Applicable Law.

**§ 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 to property or the Work~~ 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 shall remedy such damage and loss at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, or use of any contingency or otherwise. 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 under Section 3.18, but do not bar the Contractor from recovering sums of money paid by the available property insurer for the loss if the Contractor has fulfilled its duties under this Article 10 and satisfied the applicable deductible.~~

**§ 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 Applicable Law or for the safety of the Work, the Contractor shall shore up, brace, underpin, and protect foundations and other portions of existing structures that are in any way affected by the Work. Before commencement of any part of the Work, the Contractor shall serve any and all notices required to be given to adjoining land and/or property owners or other parties. The Contractor shall take reasonable steps to document conditions prior to commencing Work that may impact adjoining land and/or property and take reasonable steps to monitor and document disturbances such as subsidence or vibration to adjoining land and/or property.

**§ 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, property, or if a party or someone it is legally or contractually responsible for causes injury or damage to person or property,~~ notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~21~~ seven days after discovery. The notice shall provide sufficient detail to enable the other party to investigate ~~the matter; the matter and will include all known Details of the incident and statements of witnesses. If death, serious personal injury, or serious property damage occurs, the accident shall be reported immediately by telephone or messenger to the other party. The obligations in this Section 10.2.8 supplement reporting obligations imposed by Applicable Law.~~

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents ~~and~~ Applicable Law regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. The Contractor shall request from the Owner, carefully review, and take appropriate action based on existing documentation that may be relevant to the existence of hazardous materials including past studies, report, and due care plans. The Contractor makes appropriate recommendations to the Owner if it believes further investigation is required.

§ 10.3.1.1 The Contractor shall immediately notify the Owner and Architect if any member of the Construction Team receives notice of an inquiry, test, investigation, enforcement proceeding, environmental audit, or the like by for any hazardous materials at or emanating from the Project site.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The term "rendered harmless" shall be interpreted to mean that the levels are less than any applicable exposure standards set forth in Applicable Law. By Change Order, the Contract Time shall be extended ~~appropriately~~ appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence or failure of an obligation under the Contract Documents of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. Construction Team brings to the site. The Contractor shall be responsible for the proper handling and disposal of hazardous materials brought to the site by the Construction Team.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, for remediation of hazardous materials or substances, or for any fees, fines, or penalties imposed by any governmental agency related to hazardous materials or substances, the Construction Team brings to the site, or through the Construction Team's negligent action or inaction which makes worse existing or other hazardous conditions, except to the extent that the cost and expense are due to the Owner's fault or negligence. fault or negligence of the Owner or the Owner's Separate Contractors.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

## **§ 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, its elected and appointed officials, employees, agents and volunteers, Plante Moran Realpoint, LLC, the 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. The Contractor shall provide the Owner with documentation of the insurance coverage required by the Contract Documents, including certificates of insurances and endorsements for itself, Subcontractors, and Sub-subcontractors, and declarations sheets or certified copies of policies upon the Owner's request. Contractor shall have no right of subrogation against Owner.

§ 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 any diminution in its coverage limits or an impending or actual, cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide written notice to the Owner of such diminution in limits or 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 Owner may also procure the insurance, and, in such event, the Contractor shall pay the Owner for the cost of doing so. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. In the event the Contractor's renewal or replacement policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with written consent to submit only a certificate of insurance. All renewal and replacement policies shall in form and substance satisfactory to the Owner and be written by carriers acceptable to the Owner.

## § 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 or self-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~~Subrogation

§ 11.3.1 The ~~Owner and~~ Contractor waive all rights against (1) ~~each other Owner~~ and any of their subcontractors, sub-subcontractors, ~~agents, and employees, each of the other; officials, 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 Owner or 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, Subcontractors,~~ and sub-subcontractors. The policies of insurance ~~or self-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. Notwithstanding the foregoing, in no event shall Owner waive its right to subrogation, nor shall there be a right to receive indemnification from Owner.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### § 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. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### § 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-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.

§ 11.5.3 The Contractor shall satisfy any deductible required by the Owner's property insurance as condition precedent to the Contractor's ability to claim funds for a loss that occurs to the Work before the Owner has accepted responsibility for it under Section 9.8 or Section 9.9.



## 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

If, within the stipulated warranty period in Section 3.5.4, and after the date of (i) Substantial Completion and acceptance of the Work or any designated portion thereof or (ii) the completion of Work not finished at Substantial Completion, or within the terms of an applicable special warranty required by the Contract Documents (the "Correction Period"), any of the Work is found by the Owner to be Defective, the Contractor shall, without interfering materially with the Owner's facilities, personnel or operations, promptly cause it to be corrected, unless the Owner has previously specifically accepted such defect in writing. The Contractor shall bear all costs of correcting rejected Work, without increase in the Guaranteed Maximum Price, and without use of any contingency, including any additional testing and inspections made necessary thereby. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement. Unless the Owner authorizes otherwise, Substantial Completion shall not commence the Correction Period for any equipment or systems that:

- .1 Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the Owner has not accepted as substantially complete); or
- .2 Are not accepted by the Owner.

#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or Owner for failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, ~~installed-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 or Owner's consultant's services and expenses made necessary thereby, shall be at the Contractor's ~~expense-expense without adjustment to the Contract Sum or Contract Time.~~

#### § 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 at its cost, minimizing any interference with the Owner's facilities, personnel, or operations, 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. Section 2.5 and charge the Contractor for the cost of doing so.

§ 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. Contractor's obligation to correct non-conforming Work does not foreclose other remedies available to the Owner under the Contract Documents or Applicable Law.~~

~~§ 12.2.2.3 The one year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. Contractor's obligation to correct non-conforming Work under this Section 12.2.2 does not extend beyond the period in which the Owner may commence a legal action against the Contractor for breach of its obligations under the Contract..~~

§ 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.

~~§ 12.2.5 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, by an equitable amount which reflects the loss of value to the Owner caused by the non-conforming Work.~~ Such adjustment shall be effected whether or not final payment has been ~~made, made, and if the unpaid balance of the Contract Sum is insufficient to compensate the Owner, the Contractor shall immediately pay the Owner the difference. The Owner's acceptance of non-conforming work will only be effective if provided in writing.~~

### §12.4 DAMAGE

§ 12.4.1 If prior to the date of Final Completion any member of the Construction Team uses or damages any portion of the Work or other property, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise.

§ 12.4.2 The Contractor shall promptly repair, replace, or restore, and shall bear all such costs, of destroyed or damaged portions of the Work or the work of separate contractors, whether completed or partially completed, or any other property, whether or not owned by the Owner, that is caused by any member of the Construction Team.

§ 12.4.3 Nothing in this Section 12.4 limits the parties' rights to obtain recovery from any available property insurance.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the ~~place where the Project is located, State of Michigan,~~ 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, ~~the attempted assignment shall be void and~~ 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-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.



§ 13.2.3 The Contractor shall not assign the whole or any part of the Agreement, or any monies due or to become due, without the express written consent of the Owner. If the Contractor, with the Owner's consent, assigns all or any part of the Agreement or any monies due or to become due, the instrument of assignment shall contain a clause satisfactory to the Owner and stating that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to the prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Agreement.

### § 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 Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and 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-expense without increase in the Contract Sum and without use of any contingency.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor-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.writing.

## 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 Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, Contractor or a member of the Construction Team~~ for any of the following reasons:

- ~~.1 Issuance of for a period of 120 consecutive days by~~ an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- ~~.2 An for a period of 120 consecutive days by an~~ act of government, such as a declaration of national emergency, that requires all Work to be stopped; ~~emergency;~~
- ~~.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 for a period of 90 consecutive days pursuant to Section 9.7;~~
- ~~.4 for a period of 90 consecutive days because the Owner has~~ failed to furnish to the Contractor reasonable evidence as required by ~~Section 2.2. Section 2.2;~~ or
- ~~.5 for a period of 120 consecutive days for a suspension of the Work under Section 14.3 provided the circumstances described by Section 14.3.2.1 do not apply.~~

§ 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. Prior to terminating the Contract under Section 14.1.1, the Contractor shall give the Owner seven days' notice of its intention to terminate, and if the grounds for termination remain uncured, may proceed with termination of the Contract.~~

§ 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. Upon termination by the Contractor, the Owner will pay to the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts. This payment is the Contractor's sole and exclusive remedy for termination under Section 14.1.~~

~~§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, 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;
- ~~.2 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;
- ~~.4 fails to provide adequate assurances of its ability to complete the Work for the Contract Sum and within the Contract Time after substantiated concerns about its ability to do so have been delivered in writing by the Owner; or~~
- ~~.4~~ ~~.5~~ otherwise is guilty of ~~substantial a~~ 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-finished and the balance due the parties under Section 14.2.5 has been determined.

§ 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. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract. Upon termination under this Section 14.2, the Contractor shall deliver all Record Documents to the Owner. If requested by the Owner, the Contractor shall remove its equipment, machinery, and supplies from the Project site within seven days. The Owner may remove or store such equipment, machinery, and supplies at the Contractor's expense in the event the Contractor fails to do so.

§ 14.2.5 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.

§ 14.2.6 If the Owner's termination of the Contractor under Section 14.2 is subsequently deemed wrongful, the termination shall be deemed one for convenience under Section 14.4.

#### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, for any reason, 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 actual and demonstrated 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 been concurrently or independently suspended, delayed, or interrupted, by another cause for which the Contractor a member of the Construction Team is responsible; or
- .2 that an equitable adjustment for any particular item is made or denied under another provision of the Contract.

§ 14.3.3 In the case of a termination of the Agreement by the Contractor pursuant to Section 14.1, the Contractor's Fee through the date of termination shall be calculated as if the termination were by the Owner for convenience pursuant to Section 14.4.

§ 14.3.4 Except as provided in Section 14.1, the increase in the Contract Sum and Contract Time provided by Section 14.3.2 is the Contractor's exclusive remedy for the Owner's suspension of the Work.

#### § 14.4 Termination by the Owner for Convenience

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

Termination by the Owner under this Section shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

§ 14.4.2 Upon receipt of 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-orders,~~ and enter into no further subcontracts  
~~and purchase orders-or purchase orders; and~~
- .4 turn over all Record Documents.

§ 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; and the termination fee, if any, set forth in the Agreement.~~Subcontracts.

## 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,~~ Applicable Law, but in any ~~case-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 Final Completion of the Work, shall be initiated by written~~ notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Unless an applicable provision in the Contract Documents sets a different deadline, Claims by either party under this Section 15.1.3.1 shall be initiated within ~~21-14~~ days after occurrence of the event giving rise to such Claim or within ~~21-14~~ 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, Final Completion of the Work,~~ shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.3.3 The notice of Claim shall describe the facts and circumstances giving rise to it, the effect on the Work, a proposed solution to the Claim, the requested relief, and the basis under the Contract for the requested relief. In the event the party asserting the Claim subsequently discovers additional information relevant to the Claim it shall supplement its notice by providing it to the other party.

§ 15.1.3.4 The Contractor's failure to follow the notice provisions of this Section 15.1.3 operate as a waiver of its right to an increase in the Contract Sum and Contract Time.

#### § 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 payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

### § 15.1.5 Claims for Additional Cost

~~If the Contractor wishes to make a Claim With all Claims for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute Sum that are not subject to Section 7.3, the Contractor shall give notice in the manner provided in Section 15.1.3 before executing the portion of the Work that is the subject of the Claim, the Claim, before incurring a cost for which the Owner may become liable, and before taking any action that hinders the Owner's investigation of the Claim.~~ Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 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 in the manner~~ 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.

§ 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
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those 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 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a



response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision ~~shall be final and binding on the parties but subject may be brought~~ to mediation and, if the parties fail to resolve their dispute through mediation, ~~to binding dispute resolution either Party may file litigation subject to the jurisdiction and venue provided herein.~~

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, ~~demand request~~ in writing that the other party file for mediation. ~~If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 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.

### § 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.~~

~~§ 15.3.1 As a precondition to mediation, the Owner and Contractor agree that they shall first submit any and all Claims to resolution by the Senior Officers of the Owner and Contractor prior to either of them requesting mediation. The term "Senior Officer" shall mean with respect to the Owner and Contractor, the respective party's chief executive officer, president, managing partner, partner, chief financial officer, chief operating officer, or other individual with authority to resolve the matter and bind the party. If the Senior Officers fails to resolve the Disputes, the Contractor and Owner may mutually agree, in writing, to submit any dispute or claim arising out of this Agreement to mediation.~~

~~§ 15.3.2 The parties shall~~  
~~may~~ endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, ~~shall may~~ be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the ~~Agreement- Agreement if the parties so agree.~~ A request for mediation shall be made in writing, delivered to the other party to the Contract, and ~~may be~~ 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.~~

**§ 15.3.5** ~~The Contractor shall participate in mediation with persons or entities the Owner deems necessary for resolution of the dispute.~~

**§ 15.3.6** ~~All participants in the mediation 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. of.~~

#### **[end of AIA A201-2017, General Conditions of the Contract for Construction]**

**§ 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.~~

# DRAFT AIA® Document A133® – 2019

## Exhibit A

### Guaranteed Maximum Price Amendment

This First Guaranteed Maximum Price Amendment dated the « » day of « » in the year «Two Thousand Twenty » (the "First GMP Amendment"), is incorporated into the accompanying AIA Document A133™–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") ("GMP") dated the « » day of « » in the year «Two Thousand Twenty Five» (the "Agreement").

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

for the following **PROJECT**:

(Name and address or location)

The Charter Township of Waterford  
Renovations and Additions to the existing Student Center and Physical Education  
Buildings and outdoor recreation facilities located at:  
OCC Highland Lakes Campus  
7350 Cooley Lake Road  
Waterford, Michigan 48327

THE OWNER:

(Name, legal status, and address)

«Waterford Township »« »  
5200 Civic Center Drive  
Waterford, Michigan 48329

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

« »« »  
« »

THE ARCHITECT:

(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

### A.5 THIS AMENDMENT

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

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

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 A.1 GUARANTEED MAXIMUM PRICE

### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 3.3.6 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~~ those terms are defined in Articles 6 and 7 of the Agreement respectively.

§ 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. The total Compensation under this Agreement, including the Construction Manager's compensation for its Preconstruction Services, shall not exceed « » (\$« »).

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the total compensation authorized under the Agreement and the Guaranteed Line Items comprising the Guaranteed Maximum Price. A detailed breakdown of the Guaranteed Maximum Price organized by trade categories, 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. 3.3.1 and 6.2 of the Agreement is provided in Attachment A to this Amendment.  
(Provide itemized statement below or reference an attachment.)

1. Preconstruction Phase Services Compensation			
a. Total compensation authorized for Preconstruction Services <sup>1</sup> :	Hourly Not-To-Exceed	\$	-
2. Construction Phase Services Compensation			
a. The Guaranteed Maximum Price of the Contract Sum is:	Not-To-Exceed	\$	-
The Guaranteed Maximum Price for the Contract Sum is comprised of the Cost of the Work and the Construction Manager's Fee as follows:			
i. Cost of Work <sup>2</sup> :			
A. 'Hard Costs' (as set forth in §6.2.1.3 of the Agreement) <sup>3</sup>	Not-To-Exceed	\$	-
B. 'CM Direct Costs' (as set forth in §6.2.1.1 of the Agreement) <sup>3</sup>	Not-To-Exceed	\$	-
C. 'Personnel Costs' (as set forth in §6.2.1.2 of the Agreement) <sup>3</sup>	Not-To-Exceed	\$	-
D. Construction Manager's Contingency	0.00% of the rest of the Cost the Work	\$	-
ii. Construction Manager's Fee	0.00% of the Cost of the Work	\$	-
3. Total Possible Compensation Authorized			
a. Total possible compensation authorized By the Agreement is:	(Contract Sum GMP + Precon)	\$	-
4. Notes			
<sup>1</sup>	The value shown is inclusive of any and all costs for the Construction Manager's Preconstruction Services whether previously authorized or authorized.		
<sup>2</sup>	The values shown are inclusive of any and all costs for the Work as set forth in the Contract Documents whether previously authorized or authorized.		
<sup>3</sup>	The value shown is a Guaranteed Line Item as set forth in §6.2		

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

**Not Used** § A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

### § A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Price and accepted by the Owner are enumerated in Attachment A to this Amendment and described in the Contract Documents:

Item	Price

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates ~~The Guaranteed Maximum Price does not include the alternates enumerated in Attachment B to this Amendment, which are described in the Contract Documents and may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.~~

~~(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)~~

in writing. Unless otherwise specified in the Conditions for Acceptance, the Contractor may, with no less than fourteen (14) days' prior written notice, establish in writing a date upon which any of these alternates must be accepted by the Owner in order for the Contractor to perform the Work covered by such alternates for the price set forth Attachment B and without any adjustment to the Contract Time.

Item	Price	Conditions for Acceptance

§ A.1.1.6 Unit prices, if any:

~~(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)~~  
any, included in the Guaranteed Maximum Price and accepted by the Owner are enumerated in Attachment C to this Amendment.

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

## ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:

~~(Check one of the following boxes.)~~

☐ The date of ~~execution~~ execution of this Amendment.

☐ Established as follows:

~~(Insert a date or a means to determine the date of commencement of the Work.)~~

☐ Work shall commence on [Date]

☐ Work commenced on [Date]

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

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

### § A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

~~(Check one of the following boxes and complete the necessary information.)~~

☐ Not later than ☐ (☐) calendar days from the date of commencement of the Work.

☐ By the following date: ☐

§ 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

Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

#### ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and which includes the following:

§ A.3.1.1 The ~~following~~ Supplementary and other Conditions of the ~~Contract~~:  
Contract enumerated in Attachment D to this Amendment which are incorporated herein in full by reference.

Document	Title	Date	Pages
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§ A.3.1.2 The ~~following~~ Specifications:  
~~(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)~~

Specifications enumerated in Attachment E to this Amendment which are incorporated herein in full by reference.

Section	Title	Date	Pages
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§ A.3.1.3 The ~~following~~ Drawings:  
~~(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)~~

Drawings enumerated in Attachment F to this Amendment which are incorporated herein in full by reference.

Number	Title	Date
--------	-------	------

§ A.3.1.4 ~~The Sustainability Plan, if any:~~

~~(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)~~

Title	Date	Pages
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~~Other identifying information: Any and all fully signed Change Orders dated as of the Date of this GMP Amendment which are incorporated herein in full by reference.~~

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum ~~Price~~:

~~(Identify each allowance.)~~

Price are as set forth in Attachment B to this Amendment.

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

~~(Identify each assumption and clarification.)~~

Construction Change Directives and requests for change orders, if any, enumerated in Attachment G which are incorporated herein in full by reference.

**§ 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.)

Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based are set forth in Attachment H 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; below, the cost of which are included in the Guaranteed Maximum Price:

« »

#### **ARTICLE A.5 THIS AMENDMENT**

**§ A.5.1** The following document form an integral part of this Amendment:

Attachment A – Detailed Schedule of Values of the Cost of the Work and Contract Sum

Attachment B – Optional Alternates

Attachment C – Unit Prices

Attachment D – Supplemental Conditions of the Contract

Attachment E – Specifications

Attachment F – Drawings

(List name, discipline, address, and other information.) Attachment G – Construction Change Directives and Change Requests

Attachment H – Assumptions

**§ A.5.2** This Amendment (including attachments listed above as supplements) together with the Contract constitutes the whole agreement between the parties with respect to the subject matter contained herein and there are no terms other than those contained herein.

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

**WATERFORD TOWNSHIP,**

\_\_\_\_\_  
**OWNER (Signature)**

«Anthony M. Bartolotta, Township Supervisor»

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
Date

\_\_\_\_\_  
**CONSTRUCTION MANAGER (Signature)**

« »« »

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
Date

#### **Architect's Certification.**

The Architect is not a party to the Agreement or this Amendment. By acknowledging below, the Architect certifies that it has reviewed this Amendment and the Contract Documents set forth herein and that, in accordance with the Architect's obligations under its Agreement with the Owner, the Contract Documents as set forth herein are complete and fully describe the Work as designed by the Architect.

-

\_\_\_\_\_  
**ARCHITECT (Signature)**



<< >>< >>

(Printed name and title)



Initials

Owner: \_\_\_\_\_

Construction Manager: \_\_\_\_\_

## **Scope of Preconstruction Services**

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### **General**

The Construction Manager's Preconstruction Services shall include construction cost estimating, construction budget control, review of design for constructability, value engineering, and life-cycle costing, influence the methods and sequence of construction, scoping of Bid Packages and Work Categories, pre-qualifying and soliciting bids from subcontractor and vendors, and tabulating bids received, review and recommend bid awards, and buying out trades. Prior to the commencement of Construction Phase services, the Construction Manager shall propose, for acceptance by the Owner, a Guaranteed Maximum Price (GMP) for all Construction Phase services. Preconstruction Services for this Program will carry through the completion of the Contract Documents and bidding of all Phases of Work for the entire Program. The Owner reserves the right to make reasonable changes to this schedule as Project requirements dictate.

### **A. Schedules**

The Construction Manager shall prepare and submit to the Owner a CPM schedule for the permitting, bidding and award of trades and all activities Construction Phases of the Project. This schedule shall be updated with each estimate and shall reflect any revisions in the estimates, which affect the construction duration. Activity detail on the schedules must directly correspond to the detail of the budget line items. The schedule should include time for Owner-provided work and FFE installation. The strategy of phasing the construction of the Project should be identified from start through completion on the overall schedule. The phasing plan should be developed in coordination with the Owner, Owner's Representative Consultant, and Architect during the Design Development phase of the Project. The schedule will place significant emphasis on the phasing and logistics planning of the Project. It will take into careful consideration areas of the existing and adjacent facilities and site that must remain open during construction. The phasing should be clearly delineated.

### **B. Document Review**

1. The Construction Managers shall timely and continuously review the Design Documents to be familiar with the proposed Work throughout the design process.
2. Design/Preconstruction Services review meetings may be held as required through the Design Phase of the Project.
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. The log will be monitored and updated on a continual basis and addressed at the review meetings. Unresolved issues are to be identified in each review meeting with follow-up responsibilities and response dates being assigned to the appropriate Project Team members, including the Construction Manager.
4. The Construction Manager shall provide the members of the Project Team continual input addressing constructability, availability of materials and qualified trades for specialized systems, comparative cost/benefit analyses for various building systems, and budget/schedule impact as specific phases of the overall design are developed in order to ensure the development and completion of Contract Documents within the budget and schedule limitations.

5. If necessary in order for the Construction Manager to provide accurate information, it shall, at no additional cost to the Owner, involve the services of outside consultants and/or subcontractors in the review and budgeting of specialized systems such as structural, skin/curtain-wall, equipment, elevators, furnishings, plumbing, fire suppression, mechanical, electrical, utility service connections, pneumatic tube, food service, low voltage, and life safety.

#### **C. Design Estimates**

The Construction Manager shall prepare and submit four (4) formal estimates for the Project and/or each sub-component of the Project during the Preconstruction Services Phase. The Construction Manager will also provide periodic opinions of cost during the Design Phase as needed for drawing development in order for the team to make informed decisions and continue with design. Throughout estimating process, the Construction Manager will closely collaborate with the Architect.

1. First estimate shall be based on the conceptual planning and design plans and outline specifications. This first estimate shall be square footage based using historical and benchmark cost data for constructed projects of similar scope to validate the initial Project budget set forth by the Owner and the Owner's representatives.
2. The Construction Manager shall prepare and present to the Owner and the Project Team a second formal Project estimate at the conclusion of Schematic Design. This second estimate shall be divided into the 16 CSI Divisions, and allows the Owner to rely upon it as a "maximum target price" of the Project. This estimate should be reviewed with the Architect prior to presentation for reconciliation of finish levels, design intent, etc. Line items for design and contractor contingency shall be clearly called out.
3. The Construction Manager shall prepare and present to the Owner and the Project Team a third formal Project estimate at the conclusion of Design Development. This third estimate shall be a "full take-off estimate" of sufficient substance and detail so the Owner will be able to rely upon as an initial Guaranteed Maximum Price (GMP) and to use the estimate to secure financing of the Project or for each sub-component of the Project. The Construction Manager shall fully engage the Architect and other design team members to ensure that the scope, quality, and costs of the Project are aligned, not compromised, and within the initial GMP. Line items for design and contractor contingency shall be clearly called out. The Construction Manager should also provide detail behind their personnel costs and direct costs for review.
4. The Construction Manager shall prepare and submit a fourth estimate after 70%/90% of the Project and/or each sub-component of the Project has been bid and bought out. This estimate shall establish and represent the final GMP of the Project and/or each sub-component of the Project. Unless otherwise agreed to by the Owner, if the final GMP exceeds the initial GMP by 3%, the Construction Manager shall, without compromising Project scope, design elements/features, quality, and/or schedule, deliver the Project within the initial GMP. If it becomes necessary for the Architect to redesign or redraw any plans and/or specifications in order to align costs to the initial GMP, the Construction Manager shall bear the costs for such necessary redesign or redraw by the Architect.

#### **D. Constructability Review**

The Construction Manager shall prepare and submit a constructability review at the Design Development and 50% Construction Document portion of the Project. This review should be of sufficient detail to match the development of the Construction Documents. The Construction Manager shall review the interface of various systems; at a minimum, the following should be addressed: a) Foundations/ Structural b) Building Envelope c) Interior Architectural, d) MEP, and e) Sitework. The constructability review should focus on items that may impact Cost, Time, and/or quality of the Project.

#### **E. Value (Planning) Engineering**

Concurrent with the submission of each estimate, the Construction Manager shall submit a detailed list of value engineering options developed with the Architect and potential suppliers/subcontractors with the associated estimated costs. As necessary to achieve the Owner's objectives, the Construction Manager shall meet and work with the members of the Project Team in the evaluation of the various options and incorporate selected options into the estimates. The Construction Manager shall participate as a Project Team member in maximizing the Project value for the Owner.

#### **F. Equipment Review and Coordination of Direct Owner Contracts**

1. The Construction Manager shall assist the Owner and the Owner's consultant's in reviewing and budgeting the Owner Furnished Equipment and Furnishings material and installation costs or other items potentially affecting the Work, and shall include these budgets or allowances to the extent they are reasonably known, in each estimate to ensure that all costs are accounted for.
2. When required, the Construction Manager will work with the Owner's consultant's during the Preconstruction Services Phase of the Project to assist the Owner in receiving bids and placing purchase orders for long lead equipment, material, etc. as designated in the schedule.

#### **G. Cash Flow Analysis**

Concurrent with the submission of each Project estimate the Construction Manager shall submit a cash flow analysis for the overall construction duration of the Project. This analysis should be derived from cost loading the construction schedule as developed and revised by the Construction Manager, showing projected monthly billings for "Completed Work in Place". The analysis shall list individual monthly billings, accumulated billings to date, and percentages of completion on a monthly basis. Should the Construction Manager be successful in receiving the actual construction contract, the Construction Manager will be required to maintain the cash flow analysis throughout the duration of the Project.

#### **H. Scoping of Bid Packages and Work Categories (For Each Project)**

Bid Packages are defined as those portions of the overall Project scope that are released for competitive bidding at planned bid dates. Bid Packaging identifies opportunities for phased construction in order to accelerate the Construction Schedule to accommodate Project constraints. The main intent in developing Bid Packages and Work Categories is to account for every item of work in the overall Project and identify the trade or Construction Manager responsible for performing the Work. Additionally, the development of Bid Packages and Work Categories is to overcome scope overlaps or omissions between trades. The Construction Manager, with assistance of the members of the Project Team, shall define and prepare Scopes of Work for various bid packages and Work Categories as required ensuring the Master design and construction schedule is maintained and ensuring all required Work shall be included.

The Construction Manager shall identify during the Design Phase items which due to long lead, scarcity, market fluctuations may be recommended to purchase early in the process. The list along with approximate value of award shall be presented to the Owner to allow sufficient time to approve the development of the Bid Packages with the Architect. If required by the Owner, the Construction Manager shall develop Bid Packages to encourage Minority Owned Business, Women Owned Business, and Disadvantaged Business participation.

#### **I. Subcontractor/Vendor Promotion**

1. The Construction Manager shall proactively promote and generate interest of local and regional bidders and develop a master list of Vendors and Subcontractors, which have shown interest in submitting Bid Proposals for the Project. This list should include Vendors and Subcontractors for all categories of Work included in the total Project. The Construction Manager is required to report the percentage of the total Cost of Work that the local firms represent.
2. This list should include only companies that are responsible, qualified and financially capable.

#### **J. Construction Staging and Site Management Planning**

The Construction Manager, with input from the members of the Project Team, shall develop a proposed site management plan for staging construction operations. This plan will test the site to ensure all functionality described in the design is working. At minimum, the plan shall include such particulars as primary access roads to and from the construction site, construction parking, on-site entrances, construction personnel entrances and traffic patterns, location of temporary facilities, location of hoists, cranes and other stationary equipment if site accessibility is critical and dictates specific placement, locations of barricades and construction fences, emergency egress locations, etc. so that Owner's use of existing site or facility can be minimally disrupted or inconvenienced.

## **K. Bidding and Construction Phase**

1. Work Packaging & Bidding
  - a. The Construction Manager shall create a labor analysis, to include types and quantities of labor required for the Project. Review the requirements in light of the marketplace and make any recommendations necessary to assure the availability of an adequate labor force.
  - b. The Construction Manager shall develop Work-packaging recommendations and create package bidding schedule and procedure.
  - c. The Construction Manager shall analyze the bid market, notify potential bidders, publish bid calendar, and publish all required notices.
2. During the Bidding Process, the Construction Manager shall:
  - a. Manage, facilitate, and coordinate the bid phase.
  - b. Assemble and distribute Contract Document Work packages for bidding, confirm that all requirements have been made, and all Scope items covered.
  - c. Maintain a list of all potential bidders, subcontractors, and vendors that intend to bid the Work.
  - d. Receive bids, analyze and reconcile, and present bid results arrayed against the estimate for each individual Work Package for the Owner's approval. The Construction Manager shall hold all construction contracts for the Project.
  - e. Establish and conduct pre-award meetings.

***[END OF EXHIBIT C]***

City of Livonia  
New City Hall  
REQUEST FOR PROPOSAL (RFP) – CONSTRUCTION MANAGEMENT SERVICES  
COST WORKBOOK  
November 4, 2024

NAME OF BIDDER

ESTIMATED HARD CONSTRUCTION COST  
(INCLUDING SITE WORK):\$24,500,000

CONSTRUCTION DELIVERY METHOD:CMcConstruction Manager as Constructor

START DATE:

Pre-Construction4/15/2025

Construction5/12/2026

FINISH DATE:

5/11/2026

11/30/2027

PROJECT DURATION:

Pre-construction

Months13

Weeks56

Days391

Construction

19

81

567

ESTIMATED BUILDING AREA:72,870 Sq. Ft.

CONSTRUCTION MANAGER COMPENSATION SUMMARY

DESCRIPTION	EQ. & MATL. TOTAL	LABOR TOTAL	SUB-CON TOTAL	TOTAL COST
PRECONSTRUCTION SERVICES - PERSONNEL COSTS		\$ -		\$ -
PRECONSTRUCTION SERVICES - REIMBURSABLE EXPENSES	\$ -		\$ -	\$ -
CONSTRUCTION SERVICES - PERSONNEL COSTS		\$ -		\$ -
CONSTRUCTION SERVICES - CM REIMBURSABLES (INCLUDING INSURANCE & BONDS)	\$ -	\$ -	\$ -	\$ -
TOTAL GENERAL CONDITIONS	\$ -	\$ -	\$ -	\$ -

CONSTRUCTION MANAGER'S COMPENSATION AS % OF HARD CONSTRUCTION COST = 0.00%  
CONSTRUCTION MANAGER'S FEE (OVERHEAD & PROFIT %) =

CONSTRUCTION SERVICES - GENRAL CONDITIONS RANGE % = TO

Pre-Construction Hours: 0  
Construction Hours: 0

TOTAL ESTIMATED CM COMPENSATION AS % OF CONSTRUCTION COST = 0.00%
TOTAL ESTIMATED CONSTRUCTION SERVICES COST = \$ -

- NOTES:
- 1. Personnel rates include the salaries of personnel and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.
  - 2. Personnel rates are not expected to increase over the duration of this project. Hourly Rates shall be based on a forty (40) hour work week/salaried position and while the Construction Manager’s Personnel may work overtime, the Owner shall never be charged overtime rates.



NAME OF BIDDER 0

## SUMMARY OF STAFF HOURS

### Project Month (Overall)

[illegible]

### Construction Months

[illegible]

**NAME OF BIDDER 0** \_\_\_\_\_

	<u>Pre-construction</u>	<u>Construction</u>
START DATE:	4/15/2025	5/12/2026
FINISH DATE:	5/11/2026	11/30/2027

		<u>Months</u>	<u>Weeks</u>	<u>Days</u>
PROJECT DURATION:	Pre-construction	13	56	391
	Construction	19	81	567

	CODE DESCRIPTION NO.	QTY.	UNIT	UNIT PRICE	(E) EQUIP. & MAT'L	(L) LABOR	(S) SUB- CONTRACTOR	TOTAL COST
		CM REIMBURSABLES						
E		PROJECT OFFICE 1	MO		\$ -	\$ -	\$ -	\$ -
E		PROJECT OFFICE 2	MO		\$ -	\$ -	\$ -	\$ -
E		ARCHITECT-OWNER OFFICE	MO		\$ -	\$ -	\$ -	\$ -
E		TRADES TRAILER	MO		\$ -	\$ -	\$ -	\$ -
E		TOOL/STORAGE TRAILER	MO		\$ -	\$ -	\$ -	\$ -
E		STORAGE RENTAL	MO		\$ -	\$ -	\$ -	\$ -
E		JOB SET-UP/REMOVAL - 1	LS		\$ -	\$ -	\$ -	\$ -
E		JOB SET-UP/REMOVAL - 2	LS		\$ -	\$ -	\$ -	\$ -
E		TEMPORARY TOILETS - 1	MO		\$ -	\$ -	\$ -	\$ -
E		TEMPORARY TOILETS - 2	MO		\$ -	\$ -	\$ -	\$ -
E		OFFICE FURNITURE - 1	MO		\$ -	\$ -	\$ -	\$ -
E		OFFICE FURNITURE - 2	MO		\$ -	\$ -	\$ -	\$ -
E		OFFICE EQUIPMENT - FAX/Copy - 1	MO		\$ -	\$ -	\$ -	\$ -
E		OFFICE EQUIPMENT - FAX/Copy - 2	MO		\$ -	\$ -	\$ -	\$ -
E		COMPUTER EQUIP./NETWORK - 1	LS		\$ -	\$ -	\$ -	\$ -
E		COMPUTER EQUIP./NETWORK - 2	LS		\$ -	\$ -	\$ -	\$ -
E		OFFICE SUPPLIES - 1	MO		\$ -	\$ -	\$ -	\$ -
E		OFFICE SUPPLIES - 2	MO		\$ -	\$ -	\$ -	\$ -
E		TELEPHONE - 1	MO		\$ -	\$ -	\$ -	\$ -
E		TELEPHONE - 2	MO		\$ -	\$ -	\$ -	\$ -
E		POSTAGE & EXPRESS - 1	MO		\$ -	\$ -	\$ -	\$ -
E		POSTAGE & EXPRESS - 2	MO		\$ -	\$ -	\$ -	\$ -
E		JOB SITE RADIO/NEXTEL	MO		\$ -	\$ -	\$ -	\$ -
E		OFFICE ELECTRIC - 1	MO		\$ -	\$ -	\$ -	\$ -
E		OFFICE ELECTRIC - 2	MO		\$ -	\$ -	\$ -	\$ -
E		OFFICE FUEL - 1	MO		\$ -	\$ -	\$ -	\$ -
E		OFFICE FUEL - 2	MO		\$ -	\$ -	\$ -	\$ -
E		OFFICE PLUMBING	LS		\$ -	\$ -	\$ -	\$ -
E					\$ -	\$ -	\$ -	\$ -
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E					\$ -	\$ -	\$ -	\$ -
		CM REIMBURSABLES TOTAL			\$ -	\$ -	\$ -	\$ -
		PERMITS, INSURANCE & TAXES						
E		BUILDING PERMIT - by Owner	LS		\$ -	\$ -	\$ -	\$ -
E		SPECIAL PERMITS - by Owner	LS		\$ -	\$ -	\$ -	\$ -
E		SPECIAL FEES - by Owner	LS		\$ -	\$ -	\$ -	\$ -
E		SITE PLAN REVIEW - by Owner	LS		\$ -	\$ -	\$ -	\$ -
E		BUILDERS RISK INSURANCE - by Owner	%	\$ 24,500,000	\$ -	\$ -	\$ -	\$ -
E		100% PLM BOND - by CM	%	\$ 24,500,000	\$ -	\$ -	\$ -	\$ -
E		GENERAL LIABILITY INSURANCE	%	\$ 24,500,000	\$ -	\$ -	\$ -	\$ -
E								
		PERMITS, INSURANCE & TAXES TOTAL			\$ -	\$ -	\$ -	\$ -

<b>SUMMARY &amp; ERROR CHECK</b>		
EQUIP. & MATL. SUBTOTAL	\$	-
LABOR SUBTOTAL:	\$	-
SUBCONTRACTOR SUBTOTAL:	\$	-
<b>TOTAL:</b>	<b>\$</b>	<b>-</b>

TRUE

NAME OF BIDDER \_\_\_\_\_

			STAFFING CASHFLOW																																								
Project Month (Overall)			1	2	3	4	5	6	2025	7	8	9	10	11	12	13	14	15	16	17	18	2026	19	20	21	22	23	24	25	26	27	28	29	30	2027	31	32	33	34	35	36		
			Jan-25	Feb-25	Mar-25	Apr-25	May-25	Jun-25	Jul-25	Aug-25	Sep-25	Oct-25	Nov-25	Dec-25	Jan-26	Feb-26	Mar-26	Apr-26	May-26	Jun-26	Jul-26	Aug-26	Sep-26	Oct-26	Nov-26	Dec-26	Jan-27	Feb-27	Mar-27	Apr-27	May-27	Jun-27	Jul-27	Aug-27	Sep-27	Oct-27	Nov-27	Dec-27					
Personnel	Function	Hrly Rate	Pre-Construction Phase Project Hours																																	Pre-Construction							
																																				Hours	Cost						
	Project Exec.	\$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$	-					
	Sr. Proj. Mgr.	\$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$	-				
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	Pre-Con Mgr.	\$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$	-				
	Sr. Estimator	\$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$	-				
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Construction Months																																											
			Construction Phase Project Hours																																								
Personnel	Function	Hrly Rate																																		Construction							
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	Project Exec.	\$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$	-			
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