

REQUEST FOR PROPOSAL
CONSTRUCTION MANAGER
AND
GENERAL CONTRACTOR SERVICES
NEGOTIATED FEES AND GENERAL CONDITIONS

COMMUNITY CENTER / LIBRARY
ADA TOWNSHIP, MICHIGAN



REQUESTED BY:
JLL
Grand Rapids, MI

April 23, 2018

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PROJECT TEAM

REQUEST FOR PROPOSAL

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Project Team

CLIENT: Ada Township of Kent County, a Michigan general-law township
PO Box 370
7330 Thornapple River Dr. SE
Ada, MI 49301

CLIENT'S REPRESENTATIVE: JLL
Scott Rantala, Project Manager
15 Ionia Ave, Suite 360, Grand Rapids, MI 49503
p. (616) 649-3534 | f. (312) 470-2470
scott.rantala@am.jll.com

Owner's Rep/Project Manager:

Jones Lang LaSalle is a financial and professional services firm that specializes in commercial real estate services and investment management. Our 70,000+ people across 280 corporate offices in more than 80 countries serve the local, regional and global real estate needs of corporates and investors, delivering integrated commercial real estate services built on insight and foresight, sound market research and relevant knowledge. The Project and Development Services group will assist with the design and construction of corporate real estate projects from beginning to end, handling every detail so you don't have to. For more information, please visit www.jll.com.

ARCHITECT: OPN Architects / Progressive AE

ENGINEERS: Progressive AE

NOTE

All correspondence, questions, and communication will be with the Clients' Representative only. Any other attempts at communication, other than with the parties outlined above is grounds for bid disqualification. Please present questions in written form only.

Offerors should monitor the Ada Township website at:

<http://adamichigan.org/township/government/requests-for-proposals-rfps> for information concerning this RFP and will be required to acknowledge in their proposal that they had access to all relevant materials posted thereon.

Media Release - All media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by the Respondent or its employees including the name, trade name, trade mark, or symbol of Ada Township, Jones Lang LaSalle or its affiliates, shall be coordinated with and approved in writing by Jones Lang LaSalle prior to its release.



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Respondent shall not represent directly or indirectly that any service provided by the Respondent to Ada Township or Jones Lang LaSalle has been approved or endorsed by Jones Lang LaSalle or its affiliates, or include the name, trade name, trade mark, or Jones Lang LaSalle's symbol or those of its affiliates on a list of Respondent's customers without Jones Lang LaSalle's express written consent.

Proposals submitted in response to this RFP will remain confidential until the deadline for submitting proposals has passed, pursuant to Michigan's Freedom of Information Act.

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April 23, 2018

RE: Request for Proposal (RFP): CM/GC Services
Community Center / Library Branch
Ada, Michigan
Project #21864P180001

To Whom It May Concern:

On behalf of Ada Township, JLL serving as the Owner's Representative, is seeking proposals from interested construction management firms to provide CM/GC related services for the construction of a new community center and district library branch. Proposals are due no later than **5/4/2018 at 4:00 pm EST** and shall be based on a Guaranteed Maximum Price contract terms.

On receipt of this RFP, firms are required to email confirmation of receipt of this RFP and attachments to JLL (scott.rantala@am.jll.com).

The project description, scope of services being sought, and specifics are outlined below:

A. Project Description & History

Currently, Ada Village lacks the type of public spaces and civic facilities that make for a good community life. There is no cultural center, performance center or community center for meetings, outdoor events or gatherings.

As an end result of many agency meetings, stakeholder meetings and community workshops, the Final Design in Envision Ada (<http://adamichigan.org/village>) created an Illustration Plan, showing an ideal build-out of the Village, one of many that would conform with the Plan's intentions.

Though not originally identified, the Community Center/Library project has since been located at 7171 Headley Street on Community Reformed Church property, now in the process of being acquired.

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Ground-Up Project

This project turns on the Client's need for design and construction of an improvement on the site located at 7171 Headley Street. The new facility will be comprised of approximately 24,000 usable square feet and used as a Community Center and District Library Branch. Key elements to the project:

1. New construction on property being acquired from church.
2. Ada Township and church have entered into a parking lot lease agreement.
3. New structure(s) most likely a two floor building.
4. Architectural standards applicable to the project favor, but do not mandate, an aesthetic that is representative of buildings that were constructed in the village between approximately 1860 and 1940.
5. Project will be a CM/GC at Risk project with a GMP.
6. CM/GC will be selected during the Architect's programming phase.
7. Client/Owner/Maintenance: Ada Township
8. Occupant: Kent District Library
9. Community Center: possible uses include community education classes, corporate events, art exhibits, meeting rooms, Historical Society functions, civic hub, general public meetings, and private family events.
10. Estimated Budget: \$7M - \$10M
11. LEED certification will NOT be pursued.

Key Objectives of the Library

- Maximize flexibility, modular and innovative spaces that can adapt over time.
- Integrate Kent District Library branding and function needs, while meeting parameters of community.
- Library space that is inspirational yet functional.

Key Objectives of Ada Township

- Create a civic hub for the community.

The project is anticipated to track against the following milestone schedule:

	Start Date	End Date
Programming	5/10/18	6/21/18
Design	6/22/18	11/12/18
Permitting	11/20/18	1/17/19
Construction	2/15/19	1/24/20
FF&E and Move	1/13/20	3/6/20
Occupancy	3/9/20	3/9/20

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Tenant (KDL) or Building Owner (Ada Twp) mandatory/preferred vendors include:

- | | |
|--------------------------------------|--------------------|
| 1. Fire alarm (mandatory/preferred): | Mid-State Security |
| 2. Controls (mandatory/preferred): | None |
| 3. Security (mandatory/preferred): | Mid-State Security |
| 4. Mechanical (mandatory/preferred): | None |
| 5. Electrical (mandatory/preferred): | None |
| 6. Fiber (mandatory/preferred): | None |

B. Identified Project Risks

The following risks will be associated with this project:

1. Possible Work Restrictions to minimize noise, odor, dirt and traffic impact on neighborhood.
2. Tight site. Will need to work with Community Church on how to share parking lot during construction (laydown areas, loading zones, crane setup, parking).
3. Site will need temporary perimeter construction chain link fencing due to close proximity of sidewalks and pedestrian traffic.
4. Sunday will be a “no work” day due to Sunday services and the Church needing the parking lot.
5. Existing utility relocation.
6. Anticipated long lead items.

C. Scope of Services

Preconstruction - The CMGC agrees to provide the Owner with those technical, professional and other services within the CMGC’s capabilities and with such information, suggestions, evaluations and assessments, as may be requested or required by the Owner and/or Architect (and agreed to be provided by the CMGC) in connection with the delineation and specification of the construction work for the Project and the assessment of the cost and feasibility of performing such work.

1. Preconstruction activities occur during the architect’s programming, conceptual design, schematic design, design development and construction documentation phases.
2. Evaluate the program, schedule and establish a preliminary construction budget, among other things, (a) to assess the reasonableness of the schedule and Construction budget based on the Owner’s program for the Project, (b) to identify and evaluate alternatives to the Owner’s program, schedule and Construction Budget so as to increase the cost-effectiveness of the designs and reduce the time required for construction, (c) to evaluate and recommend alternative materials and systems and methods of achieving the Owner’s program, schedule and Construction Budget requirements or other design parameters, and (d) to assist the Owner in planning for the construction of the Project and provide a detailed phasing plan; CMGC will proactively participate with the Project Team as an integral part of the design phase through completion of construction documents by Architect. This will include CMGC

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- taking leadership for design recommendations and value engineering suggestions to achieve the project budget and schedule.
3. Provide line item detailed construction budget estimates at the end of programming and at end of each design phase (Test Fit #1, Test Fit #2, CD, SD, DD, and 90% CD).
 4. Provide cost estimates for construction material options such as building shell, building mechanical systems, glazing systems, roofing types, etc. as they become apparent during design.
 5. During this time, the Project Team will establish all of the management procedures that will be used throughout the duration of the project. These include, but are not limited to, reporting mechanisms, contracts, invoicing and disbursements.
 6. Throughout the pre-construction process, you must attend weekly progress meetings with the project team to ensure that all pertinent issues are being addressed in a timely manner.
 7. Review design elements/materials and make recommendations with respect to cost-effectiveness and consistency with traditional practices.
 8. Review overall design and make recommendations as it relates to construction feasibility.
 9. Provide value engineering services and recommendations of design alternatives.
 10. Provide add alternates that could be incorporated into the bidding documents.
 11. Attend meetings with Building Committee, Ada Township Board, KDL and community meetings when needed. Below are noted design milestone meetings.
 - a. Programming – minimum of (2) meetings to present findings to Building Committee and then Township Board.
 - b. Space Planning – minimum of (3) meetings to present findings to Building Committee, Township Board and public.
 - c. Schematic Design – minimum (2) meetings
 - d. Design Development – minimum (2) meetings
 - e. Construction Documents 90% - minimum (2) meetings
 - f. GMP Amendment – minimum (2) meetings
 12. Present construction budget estimates to Building Committee and Ada Township Board alongside with architect.
 13. Assist Owner and Architect in reviewing the requirements of governmental agencies having jurisdiction over the Project; assist the Architect, as and when requested, in the preparation and submission of applications or other documents necessary for or incident to the issuance of any variances or approvals required in connection with the design or construction of the Project from any local, state, or federal governmental authorities having jurisdiction over the Project. Provide Owner with advice on the cost impact of these requirements and suggested possible alternatives. Include code and safety requirements.
 14. Make recommendations for pre-qualifications criteria for trades, establish bidding schedules and recommend bidders for trades and vendors.
 15. Manage bidding procedures including the selection of qualified bidders. Submit bid documents to Owner for validation and approval.
 16. Assist architects and engineers in assembling bid packages, augmented by trade specific scope of work. Conduct pre-bid conferences to familiarize bidders with bidding documents

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and management techniques. Assist the architect with bidders' questions and with the issuance of Addenda.

17. Receive and analyze all bids. Prepare written analysis and comparisons and recommend the trade contractors or vendors. Assist Owner in negotiations with trade contractors and / or vendors.
18. Recommend to the Owner that appropriate investigations, surveys, tests, analyses and reports be obtained as necessary for the proper execution of the Work, CMGC shall also conduct an existing conditions survey of the Premises and provide Owner with a report of the same prior to turnover by the Landlord. The intent of the existing conditions survey is to document the site conditions prior to bidding.

Construction

19. Upon commencement of construction, the Construction Manager shall assume the responsibility for managing, supervising, and coordinating all aspects of the construction project, within its scope, as well as portions of the project that require intersection, coordination with the Client's Vendors or KDL.
20. Throughout the project, the Construction Manager must maintain a team comprised of a project executive, project manager, dedicated onsite superintendent, foreman, estimator, and accounting support staff. Client reserves the right to approve all members of the project team and to request the replacement of a member of the team at their sole discretion.
21. Propose site and mobilization logistics with the cooperation and approval of the client and Community Church.
22. Schedule critical path activities for the Project, including identification of any long lead items for expedited or pre-purchase consideration.
23. Administrative responsibilities include:
 - a. Attending weekly progress meetings with the team to ensure that appropriate matters of construction are being considered.
 - b. A method of submittal distribution and tracking will be established and reviewed periodically to maintain the construction schedule.
 - c. Preparation and distribution of change orders for Client approval
 - d. Monthly requisitions accurately reflecting work in place are required. Construction Manager will be required to fill out a JLL lien waiver tracking log with each pay application.
24. Field responsibilities include managing a safety program and maintaining safety procedures according to local statutes, laws and codes. Daily logs must be maintained documenting weather, manpower on site, work in progress, accidents, and field issues. Team members must inspect all facets of work put in place to ensure that installation is proceeding in accordance with specifications and local laws on a daily basis.
25. Insurance must be maintained for all subcontractors, suppliers, and vendors (including materials stored offsite) throughout the entire duration of the construction project. Certificates of Insurance must reflect any "additional insured", verbiage required by the Client (See Exhibit C)
26. All closeout documents must be submitted in electronic form (bound form if requested) and delivered to Client no more than two months after the occupancy date. Retainage for the

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project will be held until all of the required documentation is accepted by the Client. The close-out package must include the following:

- a. As-built drawings for all MEP and structural trades consisting of reproducibles and CADD files,
 - b. Operation and Maintenance Manuals for all components installed in or around the project scope,
 - c. All Submittals,
 - d. Subcontractor/Supplier Contact Information,
 - e. Warranties and Guarantees for all components of the project,
 - f. Commissioning,
 - g. Training,
 - h. Sign Offs from all applicable agencies having jurisdiction over the project, and
 - i. Final Waiver of Lien from all subcontractors and suppliers.
27. Include formal site inspection visits by architect at:
- a. Wall layout
 - b. Wall rough-in near completion
 - c. Above ceiling rough-in near completion
 - d. 50% progress
 - e. 75% progress (finishes)
 - f. Punch list walk
28. Obtain the general building permits and certificates of occupancy required by authorities having jurisdiction over the project.
29. Establish and maintain safety procedures, risk management, O.S.H.A. and other programs necessary for the safe and expeditious execution of the work.
30. Arrange for delivery, storage, protection and security of all purchased items and equipment, which are part of the project until they are incorporated into the project.
31. Receive and review all shop drawings, cuts, samples, delivery schedules, materials lists, etc. for compliance with the contract documents. Provide comments before submitting information to the Architect for concurring review and approval. Oversee the submission of all shop drawings, composite shop and coordination drawings, brochures and material samples. Monitor and implement the follow up of all documents and materials to ensure the proper sequence of approvals by the Architect so as not to delay the progress of the work.
32. Maintain daily records covering manpower, work in progress, accidents and field observations.
33. Maintain at the project site, on a current basis, a record copy of all contracts, drawings, specifications, addenda, change orders and other modifications, in good order and marked to record all changes made during construction, shop drawings, samples, product dates and all related documents and revisions. This is essential in order to enable a complete set of “As-Built” documents to be prepared at the end of the project.

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34. Establish procedures for processing change orders and scope changes to the work as defined by project specifications. Update and submit change order logs to JLL on a weekly basis.
35. Negotiate with trade contractors on behalf of client, all change orders as deemed appropriate by client.
36. Receive all trade contractors', vendors' and suppliers' applications for payment, review and adjust same, and issue an application for payment to the project manager and architect for review and approval.
37. Before the first partial payment becomes due, the CMGC will provide a detailed breakdown for each trade and a schedule of values for the component of the total contract amount consistent with the guaranteed maximum proposal. A "Pencil Draw" shall be submitted for signature to the owner's representative five days before the deadline for each Pay Application.
38. The CMGC will provide and supervise general condition items. General condition items will be clearly stated and itemized by the CMGC in this proposal. All items purchased specifically to satisfy general conditions for this project will be turned over to the Owner in good condition, or be properly disposed of, at the conclusion of the project.
39. CMGC to identify all rental charges associated with equipment that is wholly owned or leased directly from the CMGC to the Owner. CMGC to identify lease rates for all equipment, materials and supplies. CMGC to separate and identify which equipment will be leased from the CMGC and which equipment will be leased from a third party. It is expected that where equipment is available at a lower leased rate from a third party, that the equipment will not be leased from the CMGC.
40. Establish and provide an inspection system for safety programs and procedures to be followed by all trade contractors. CMGC to identify safety coordinator.
41. Develop and establish for Owner's benefit and use a quality inspection control system in order to ensure that the required standards of construction are met.
42. Develop a checking and testing procedure, which will ensure that all systems are adequately tested and balanced prior to their acceptance.
43. Coordinate all testing provided by others as required by the technical sections of the specifications, building ownership, and as required by the building code.
44. Keep an accurate record of all tests, inspections conducted, findings and test reports. Submit final test reports to Owner and Architect. Services of professional engineers and Architect as required by the building code would be performed for Owner directly.
45. All test reports, records, and results shall be turned over to building management when requested.
46. Provide closeout reports including guarantees, warranties, "As-Built" drawings, and maintenance and procedures manuals for new equipment and provide sign-offs by authorities having jurisdiction over the project.
47. CMGC will be responsible for attending an 11 month warrantee review and correcting any deficiencies identified by a team consisting of Building Engineer, Jones Lang LaSalle, Architect of Record, and Engineer of Record.

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48. The Owner is currently NOT seeking this project to be LEED Certified.

Contract Documents

Basis of contract will be the following documents:

- AIA Modified Contract and Exhibits (See Exhibit A)
 - JLL Request for Proposal, terms and exhibits
 - Addendum to JLL RFP, if any
49. CMGC's Applications for Payment shall be accompanied by the following, all in form and substance satisfactory to the Client and in Compliance with applicable Michigan statutes:
- a. A duly executed and acknowledged CMGC's Sworn Statement showing all contractors with whom CMGC has entered into subcontracts, the amount of such subcontract, the amount requested for any subcontractor in the Application for Payment and the amount to be paid to the CMGC for such progress payment, together with similar sworn statements from all subcontractors and, where appropriate, from sub-subcontractors.
 - b. Duly executed conditional Waivers of Mechanics' liens from CMGC and all such subcontractors, establishing payment or satisfaction of the payment requested by CMGC at the time of Application for Payment.
 - c. Waivers shall be submitted at the time of payment application.
50. CMGC will obtain and pay for all permits, licenses, etc. necessary to complete their work. All contractors (including any subcontractors) will be required to be licensed and bonded as required by any applicable jurisdiction. CM/GC shall include any and all sales & use taxes.

D. Response Protocol

RFP responses must be submitted in an organized manner, each copy should address distinct sections as listed in the RFP Table of Contents. All RFP responses should have consecutively numbered pages.

All hard copy proposals must be received in the office of the Township Supervisor at the address below by **5/4/2018 at 4:00p.m. EST**. Submit eight (8) hard copies of the proposal. Proposal envelope shall be labeled: PROJECT: Ada Township Community Center / Library Facility, ATTENTION: Jim Ferro.

Ada Township Office
Township Clerk's Counter
7330 Thornapple River Dr. SE
Ada, MI 49301

Request for Proposal

JLL is requesting one electronic response by 5/4/18, which may be emailed directly to Project Manager at: scott.rantala@am.jll.com.

E. Proposal Format

In an effort to keep the proposals at a concise level to facilitate review, we have determined an overall document size guideline. Please maintain a thirty-page limit on the body of the proposal. Any additional information necessary in your submission should be presented as attachments/exhibits. The proposal shall be organized according to the outline give below:

1. *Title Page*
The title page should clearly state your company name, contact name, address, telephone, and fax number.
2. *Company Background and Project Approach*
Provide a brief history of your firm and identify recent projects of similar size and scope that your firm has completed. State the qualities and attributes your firm brings to this project that may distinguish it from others. State the number of years your firm has been in business and any previous experience with the client, KDL or other library districts.
3. *Organization and Staffing*
Within this section, you should provide an organizational chart for the local offices of your company and for this specific project. Include resumes of all key project team members. Please make us aware of any other projects the team members will be involved with concurrent with this project.
4. *Construction Management Approach*
A summary of the Construction Management approach that will be adopted to enable the timeline as shown to be achieved. A summary of the risks, issues and opportunities that Owner may wish to consider. Include a high level construction schedule for this 24,000 sf new build project from out to bid with Bid Packages to Substantial Completion ready for Owner/KDL equipment move-in.
5. *Client References*
Included in your proposal should be at least three Client references that we may contact regarding your work. If possible, please provide specific examples of any (enter specialized specific components) your firm has completed in the recent past. Project references should be of a similar size and scope of the project described.
6. *Insurance and Bonding*
Provide your firms' insurance carrier and agent information. Include contact names and phone numbers. Please outline the insurance limits that your firm carries. Please refer to the attached sample contract for specific insurance requirements.
7. *Safety*
Provide records showing the last 5 years status of OSHA 300 Safety Logs. Provide EMR over the last 5 years.
8. *Prior/Pending Litigation*
Provide record of last 10 years prior/pending litigation.

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9. *Fee Proposal (see below)*
10. *Case Study*
Provide initial cost estimate and final construction cost report for a past new build public library branch or civic project of similar size built within the last 5 years. Exclude soft costs such as land purchase, legal, design and site improvement costs (utilities, earthwork, paving, landscaping, etc).
11. *Exceptions*
Provide any exceptions your firm has to the terms of this RFP and the proposed contract form. Failure to provide exceptions during the RFP response phase will result in waiver of any exceptions at award.

F. Fee for Basic Services

1. Respondents to provide fees based on attached bid form. Supply form in electronic MS Excel format with proposal. See Exhibit B for breakdown of fee categories.
2. Provide a schedule of hourly rates with the proposal. It must contain the project team members included in this project, complete with their associated actual hourly rates.
3. Provide weekly rate for extension of General Conditions.

G. Evaluation Criteria

Proposals will be evaluated using a weighted scorecard system. The basis for selection will include, but not limited to:

1. Competitiveness of proposal (fee and general conditions).
2. A record of past performance with civic and library projects.
3. Quality and experience of team members.
4. Demonstration of administrative ability to control costs during design and trade procurement.
5. Schedule – ability to perform the work with resources available.
6. Experience working with projects that have a capital campaign fund in progress, soliciting gifts-in-kind and donations.

H. Selection Process

From the submitted proposals, a short list of an anticipated three (3) firms will be interviewed. Assume 1-hour interview. All interview expenses incurred by the selected firms will be borne by the firms.

The Selection/Interview Committee will be comprised of representatives from the Architect, Ada Township, Kent District Library, Downtown Development Authority and community representatives. The tentative timeline is as follows:

Selection Timeline	Date
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Issue RFP	4/23/2018
RFP Proposals Due	5/4/2018
Shortlist Interviews	5/21-22/2018
Award	5/24/2018
Twp Board Approval of Agreement	6/11/2018

Lobbying: Interested parties are requested not to contact the Library Board, Ada Township Board, Township Supervisor or other elected officials and the review committee during the RFP process. Any lobbying by bidders during the RFP process may result in disqualification from the project.

Inquiries: Any questions concerning the project or the RFP should be addressed to Scott Rantala, JLL Project Manager at scott.rantala@am.jll.com by no later than 5/1/18 EOD.

The Township reserves the right to negotiate with the second selection if provided agreement cannot be established with the selected bidder. This RFP does not commit Ada Township to award a contract or pay any cost associated in the preparation of the proposal or interview. Ada Township reserves the right to modify or cancel this RFP.

EXHIBIT A - Agreements

The Client's desired form of contract is the AIA® Modified Document A133 – 2009 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. General Conditions will be defined by the AIA Modified A201-2017. **Please raise any objection to the terms within this form of contract as part of your RFP response.**

DRAFT AIA® Document A133™ - 2009

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

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

« Ada Township »« »
« 7330 Thornapple River Dr., Ada, MI 49301 »

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

« »« »
« »

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

« Community Center / Library »
« »

The Architect:
(Name, legal status and address)

« »« »
« »

The Owner's Designated Representative:
(Name, address and other information)

« »
« »
« »
« »
« »
« »

The Construction Manager's Designated Representative:
(Name, address and other information)

« »
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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™-2007, 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.

The Architect's Designated Representative:
(Name, address and other information)

« »
« »
« »
« »
« »
« »

The Owner and Construction Manager agree as follows.



TABLE OF ARTICLES

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this A133-2009 Agreement (the "Agreement") and the other documents listed in Section 12.2- Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the 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 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between any of 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. The A201 referenced in Section 12.2 governs over any conflicting terms in any other Contract Document except for this Agreement.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Contractor shall exercise the skill, care and diligence of the leading construction managers of similar national reputation, qualifications and experience performing work on similar projects of comparable size, cost and sophistication to the Work. 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.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™ -20072017, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general

conditions of the contract shall be as set forth in A201–~~2007~~2017, which document is incorporated herein by reference. The term “Contractor” as used in A201–~~2007~~2017 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. 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.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

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. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; 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.

§ 2.1.3 When Project requirements in Section 3.1.1 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 could 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 well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 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 reasonably requested** by the Owner, ~~Construction Manager and or by the Architect~~, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well 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.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise ~~reasonable care~~ the standard of care in Section 1.2 in preparing schedules and estimates. 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.

§ 2.1.9 Notices and 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 for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 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 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .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, allowances, contingency, 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 either accept or reject the Guaranteed Maximum Price; ~~and~~ A list of allowances showing the basis for each.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and 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.

§ 2.2.6 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.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 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.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-~~2007~~2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under written subcontracts ~~or by other appropriate agreements~~ with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect and Owner. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (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 Contract Time and 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 and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, 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 Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 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 to the Owner and Architect.

§ 2.3.2.6 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 submittal schedule in accordance with Section 3.10 of A201–~~2007~~2017.

§ 2.3.2.7 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. The Construction Manager shall also 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.

§ 2.3.2.8 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 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–~~2007~~2017 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–~~2007~~2017 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER’S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

~~§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.~~

§ 3.1.32 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 Section 6.1.1, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project’s scope and quality.

§ 3.1.43 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the

Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner ~~but unless the Construction Manager knows, or should reasonably have known, that the information or services are inaccurate. The Construction Manager~~ shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.3.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.3.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The 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 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.

§ 3.1.4.3.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to 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.

§ 3.1.4.3.4 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.

§ 3.2 Owner's Designated Representative

The ~~Owner-Owner's~~ shall identify a representative designated on page one is the only person authorized to act on behalf of the Owner with respect to the Project. The Owner's 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 A201-2007, the Architect does not have such authority. The term "Owner" means the Owner ~~or the Owner's authorized representative~~.

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

§ 3.3 Architect

The Owner shall retain an Architect under a written agreement to provide services, duties and responsibilities for the Project as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy (with financial terms redacted) of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:

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

« »

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « twelve » (« 12 ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

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§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable ~~upon~~ 45 days after presentation of the Construction Manager's invoice, that has been approved by the Architect, subject to 7.1.3 below. Amounts unpaid « sixty » (« 60 ») days after the receipt of the approved invoice date shall bear interest beginning on the 61st day at the annual 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.)

« 5 » % « five »

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 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.)

« »

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

« »

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

« »

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed « » percent (« » %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

« »

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§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-~~2007~~2017, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 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 Section 7.3.3 of AIA Document A201-~~2007~~2017, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-~~2007~~2017 and the term "costs" as used in Section 7.3.7 of AIA Document A201-~~2007~~2017 shall have the meanings assigned to them in AIA Document A201-~~2007~~2017 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 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.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-~~2007~~2017 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 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 5.1.2 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 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages 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.

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

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 With the Owner's prior written consent, Wages-wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, 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.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such 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 6.2.1 through 6.2.3.

~~§ 6.2.5 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, with the Owner's prior approval.~~

§ 6.3 Subcontract Costs

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

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

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 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.

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

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling 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.

§ 6.5.2 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 costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 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.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 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.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-~~2007-2017~~ or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and 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. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-~~2007-2017~~ or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior 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.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 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 Section 10.4 of AIA Document A201-~~2007-2017~~.

§ 6.7.3 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 negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-~~2007-2017~~ 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 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 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 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of 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 to fulfill a specific responsibility of the Contract;
- .6 Any cost not ~~specifically and expressly~~ described in Sections 6.1 to 6.7;

- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 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 them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, 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.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 7.1.3 If an Application for Payment approved by the Architect is received by the Owner, Owner will make payment not later than 30 days after that receipt. This section’s payment obligations are subject to the following:

If Owner disputes in good faith any portion of any invoice, Owner will notify Architect and Construction Manager within 15 days of receipt of the disputed invoice. That notification will indicate the portion of the invoice that Owner disputes or for which Owner claims a setoff. Any portion of an approved invoice not disputed by Owner must be paid by Owner within 45 days of receipt. Payment does not waive any claims that Owner may assert against Construction Manager. Owner need not pay any amount disputed in good faith by Owner in the manner and within the time period set forth above until the matter in dispute has been resolved by the parties. Any amount so disputed is not an amount due Construction Manager under this Agreement until the matter is resolved by the parties. If the resolution of the matter entitles Construction Manager to be paid a previously-disputed amount, then Owner will pay that amount to Construction Manager within 10 days after resolution of the matter. ~~Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than « » (« ») days after the Architect receives the Application for Payment.~~
(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 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 cash disbursements 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, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 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 the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 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 for which the Construction Manager has made or intends to make actual 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.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take 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 schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-~~2007~~2017.
2. Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Construction Manager's Fee, less retainage of « » percent (« » %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract retainage of « » percent (« » %) from that portion of the Work that the Construction Manager self-performs;
5. Subtract the aggregate of previous payments made by the Owner;
6. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-~~2007~~2017.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 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 stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 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 Section 12.2.2 of AIA Document A201-~~2007~~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.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after both of the following have occurred: (1) the issuance of the Architect's final Certificate for Payment, and (2) the Owner's receipt of a final, non-temporary certificate of occupancy; or as follows:

«—»

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§ 7.2.2 The ~~Owner's auditors~~Owner will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the ~~Owner's auditors~~Owner report reports to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the ~~Owner's auditors~~Owner, 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 Section 9.5.1 of the AIA Document A201-~~2007~~2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-~~2007~~2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the ~~Owner's auditors report~~Owner reports the Cost of the Work as substantiated by the Construction Manager's final accounting to be 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 Section 15.2 of A201-~~2007~~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~~Owner becoming binding on the Construction Manager. ~~Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.~~

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager 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 the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-~~2007~~2017. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-~~2007~~2017.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
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ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-~~2007~~2017. 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, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-~~2007~~2017, the method of binding dispute resolution shall be as follows:

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

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-~~2007~~2017

☒ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

« »

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-~~2007~~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.)

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 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 Section 14.1.1 of A201-~~2007~~2017.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services 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 4.1.

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§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 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 10.1.2:

- .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 5.1 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.

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 which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. 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 10, 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.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-~~2007~~2017.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-~~2007~~2017 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-~~2007~~2017 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-~~2007~~2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-~~2007~~2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

§ 10.4 Payment by the Owner under this article 10 and otherwise is subject to Owner's receipt of all sworn statements, lien waivers, payment applications, and other documents that Owner may reasonably request.

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ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–~~2007~~2017.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–~~2007~~2017 shall apply to both the Preconstruction and Construction Phases. Construction Manager may not publicize, advertise, or otherwise use or disclose any pictures or other representations of the Project except for photographs of those portions of the completed Work that are observable by the general public, such as views from public streets, visitor parking areas, and visitor lobbies.

§ 11.3 Governing Law

Section 13.1 of A201–~~2007~~2017 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves to this Agreement. Neither the Owner nor the Construction Manager shall assign its rights under this Agreement without the written consent of the other, except that the Owner may assign its rights under this Agreement without the Construction Manager's consent, to any of the following: to a lender providing financing for the Project, an affiliate of Owner, or a purchaser of the Project. An assignment of rights does not affect the assigning party's duties under this Agreement, except to the extent that the recipient of the assignment agrees to assume all of the assigning party's duties. This section controls over any conflicting terms in section 13.2.2 of the A201. The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 Any consent or approval by Owner that the Contract Documents require or permit is effective only if in writing and signed by the Owner.

§ 11.6 CONFIDENTIAL INFORMATION

§ 11.6.1 Confidential Information of a party means information of that party that is not available to the public. But Confidential Information does not include information that (a) becomes generally available to the public other than as a result of a disclosure that violates this agreement; (b) becomes available from a third party who obtained the information legally and is not bound by a confidentiality agreement with the party; or (c) is required to be disclosed by court order, but in that case recipient will immediately notify the other party of the order and exercise reasonable efforts to maintain confidentiality except as the court order may require otherwise.

§ 11.6.2 Except for information subject to disclosure under Michigan's Freedom of Information Act ("FOIA"), if a party receives Confidential Information of the other party, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth below. Architect and Contractor acknowledge that information received by the Owner from the Architect or the Contractor will be publicly available under FOIA, subject only to specific FOIA exemptions.

§ 11.6.3 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors if necessary to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors promise in writing to keep that information confidential.

§ 11.7 Notices

Any notice required or permitted under this Agreement to be given to Owner or Construction Manager must be in writing, be addressed to the recipient's representative designated in article 1, and is deemed given (a) upon personal delivery upon the representative of the recipient, (b) the same business day after being sent by electronic transmission such as facsimile or electronic mail if sent before 4:00 p.m. in the recipient's time zone, otherwise on the next business day, (c) the next business day after being delivered, postage prepaid, to a nationally recognized

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private overnight mail service (such as FedEx or UPS), or (d) the third business day after being mailed, postage prepaid, by first-class U.S. mail service.

« »

§ 11.8 As required by Michigan law, the following terms are included.

§ 11.8.1 Bonds. The Construction Manager must provide at its cost a performance and payment bond as described in MCLA 129.201-129.212; and

§ 11.8.2 Miscellaneous. As required by MCLA 125.1561 – 125.1566:

§ 11.8.2.1 The Construction Manager's representative on page 1 is the person representing the contractor who will submit written requests for progress payments. The Owner's representative on page 1 is the person representing the Owner to whom progress payment requests must be submitted.

§ 11.8.2.2 The Owner may defer progress payments until work having a prior sequence is in place and approved.

§ 11.8.2.3 Progress payments need not be paid by the Owner until the later of (a) 30 days after the Architect certifies to the Owner that the work is in place and (b) if funds for the payment are to come from state or federal sources, 15 days after the Owner has received those funds.

§ 11.8.2.4 Retainage held by the Owner is limited to 10% of the value of work in place until work is 50% in place. After 50% is in place, no retainage may be held unless the Owner determines that the contractor is not making sufficient progress or for other specific performance cause, in which case up to 10% retainage may be held. After 94% of the work is done, retainage must be released upon the contractor's request but only if an irrevocable letter of credit is provided as described in MCLA 125.1563.

ARTICLE 12 SCOPE OF THE ~~AGREEMENT~~ CONTRACT DOCUMENTS

§ 12.1 ~~This Agreement represents~~ The Contract Documents represent 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~~ The Contract Documents may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the ~~Agreement~~ Contract Documents:

- 1 AIA Document A133–2009, 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 A201–~~2007~~2017, General Conditions of the Contract for Construction, as modified in writing between Owner and Construction Manager
- 3 AIA Document E201™–~~2007~~2017, Digital Data Protocol Exhibit, if completed, or the following:

« »

- 4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

« »

- 5 Other documents:
(List other documents, if any, forming part of the Agreement.)

« »

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

« »« »

(Printed name and title)



DRAFT AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« Community Center / Library »

« »

THE OWNER:

(Name, legal status and address)

« Ada Township »« »

« »

THE ARCHITECT:

(Name, legal status and address)

« »« »

« »

Owner: Ada Township

By:

Its:

Date:

Architect:

By:

Its:

Date:

Contractor:

By:

Its:

Date:

All references in this A201 to “Contractor” shall mean “Construction Manager”. Any references in the Owner-Architect B133 to an A201 mean this modified version of the AIA-A201 form. This A201 will be incorporated into the A133 agreement between Owner and Construction Manager.

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- 2 OWNER
- 3 CONTRACTOR
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- 5 SUBCONTRACTORS

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 consist of the AIA A133 agreement between the Owner and Contractor (hereinafter the "A133"), this A201, and only those other documents specifically listed in the A133 as being part of the Contract. The Contract Documents are the entire agreement (the "Contract") between the Owner and Contractor. The Contract supersedes prior negotiations, representations, agreements, and communications, written and oral. Unless specifically enumerated in the A133, 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, or any other document of any kind. The Contract may be amended only in writing signed by the Owner and Contractor. 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 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.~~

§ 1.1.2 The Contract Third-Party Beneficiaries

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

§ 1.1.3 The Work

The term "Work" means 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 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, ~~part or all of the Drawings, drawings, and Specifications~~specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the ~~Agreement-A133~~ 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.

§ 1.2 ~~Correlation and Intent of the Contract Documents~~Conflicts Between Contract Documents

§ 1.2.1 ~~Terms in the A133 control over conflicting terms in any other Contract Document. Terms in this A201 control over conflicting terms in any other Contract Document other than the A133. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.~~

§ 1.2.1.1 ~~The unenforceability of any provision of the Contract Documents shall not invalidate the Contract or any of its remaining provisions. Each provision of the Contract Documents is enforceable only to the extent permitted by applicable law. The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.~~

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service. Except as otherwise agreed in writing between the Owner and the Architect, the Architect will retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.~~

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice,

if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Any notice required or permitted under the Contract must be in writing and is deemed given (a) upon personal delivery upon the Designated Representative of the recipient, (b) the same business day after being sent by electronic transmission such as facsimile or electronic mail if sent before 4:00 p.m. in the recipient's time zone, otherwise on the next business day, (c) the next business day after being delivered, postage prepaid, to a nationally recognized private overnight mail service (such as FedEx or UPS) or (d) the third business day after being mailed, postage prepaid, by first-class U.S. mail service. The notice shall be addressed to the party's Authorized Representative as identified in the A133. Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, or any other form, if they want to establish the protocols for the development, use, transmission, and exchange of digital data. The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will 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.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a digital building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in writing shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees. This liability limitation does not apply, however, to the extent that any of those otherwise protected parties are aware of, or should reasonably have been aware of, a defect in the information supplied. Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the A133 and is referred to throughout the Contract Documents as if singular in number. The Owner's representative identified in the A133 is the only person who has authority to bind the Owner with respect to a matter requiring the Owner's approval or authorization. The Architect does not have such authority. The term "Owner" means the Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such

information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements Confidentiality

§ 2.2.1 Confidential Information of a party means information of that party that is not available to the public. But Confidential Information does not include information that (a) becomes generally available to the public other than as a result of a disclosure that violates this section 2.2; (b) becomes available from a third party who obtained the information legally and is not bound by a confidentiality agreement with the party; or (c) is required to be disclosed by court order, but in that case recipient will immediately notify the other party of the order and exercise reasonable efforts to maintain confidentiality except as the court order may require otherwise.

§ 2.2.2 Except for information subject to disclosure under Michigan's Freedom of Information Act ("FOIA"), if a party receives Confidential Information of the other party, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth below. Architect and Contractor acknowledge that information received by the Owner from the Architect or the Contractor will be publicly available under FOIA, subject only to specific FOIA exemptions.

§ 2.2.3 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors if necessary to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors promise in writing to keep that information confidential. Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located (the "Architect"). ~~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 Owner's retention of the Architect terminates, the Owner shall retain a successor, whose status under the Contract Documents shall be that of the Architect. If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, 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.

§ 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. The Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, and the Owner may withhold payment, 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 within 30 days after written request, without limiting the Owner's other rights. The Contractor is not entitled to a Contract Time adjustment in connection with the Owner's work under this section. 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. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement ~~A133~~ 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 accordance with the Contract Documents.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4 ~~or 2.3.5~~, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions ~~discovered by or made known to the Contractor as a request for information in such form as the Architect may require~~that the Contractor becomes aware of. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, ~~subject to Section 15.1.7, without regard to any waiver of consequential damages or any other damage waiver that may be included in the Contract Documents~~, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures ~~and shall not proceed with that portion of the Work without further written instructions from the Architect~~. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. ~~Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.~~

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 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.

§ 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.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that (a) 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 and (b) 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, will be free from defects and will be in accordance with generally-accepted construction practices for similar work and with Owner's and Architect's design requirements, engineering standards, and construction standards. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor or any of its subcontractors, 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. Contractor's warranty shall extend for a period of one (1) year from Substantial Completion unless otherwise provided by law.

§ 3.5.2 Neither the final certificate of payment nor any provision in the Contract Documents shall relieve the Contractor of the responsibility for negligence or faulty material or workmanship within the extent and period provided by law. Upon written notice, the Contractor shall remedy the defects due thereto and shall pay all related expenses for any damage to other work.

§ 3.5.3 Contractor will ensure that 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. The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, 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.

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies 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.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the 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.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

§ 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, 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 Contractor expects to commence the Work, interim schedule milestone dates showing how the Contractor expects to achieve Substantial Completion by the deadline in the Contract Documents; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.~~ The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 ~~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 and shall update that schedule for the Architect's approval as necessary to maintain a current schedule.~~ 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. ~~The Architect's approval of a schedule does not modify the Contract Time.~~

§ 3.10.4 ~~The Contractor shall monitor the progress of the Work relative to the schedule, promptly advise the Owner of any delays or potential delays, and submit to the Owner a written progress report in executive summary form at least once per week in form and substance satisfactory to the Owner. In the event a progress report indicates any unexcused delays, the Contractor shall propose an affirmative plan to correct the delay, including, without limitation, overtime and/or additional labor, if necessary. The Contractor shall use best efforts to mitigate the effects of any delay to the fullest extent possible without incurring additional cost or expense. In no event shall any progress report constitute an adjustment in the Contract Time or the Contract Sum unless any such adjustment is agreed to by the Owner under a written Change Order.~~

§ 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~~ Contract amendments, 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 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. Conflicting language stamped or otherwise written on submittals does not affect the Contractor's obligations under this section.

§ 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.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

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

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

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

§ 3.13.1 The Contractor may bring to and store on the Project site only materials and equipment to be used directly in the Work. After equipment is no longer required for the Work, the Contractor must promptly remove it. The Contractor must insure these materials and equipment as required by section 11.3.1.3.

§ 3.13.2 Neither the Contractor nor any entity for whom the Contractor is responsible may erect any sign on the Project site without the Owner's prior written consent.

§ 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.

§ 3.15 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 and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Contractor shall also clean and remove all broken or scratched glass and replace it with new glass meeting the requirements of the Specifications; shall remove all paint droppings, spots, stains, and dirt from finished surfaces; and shall thoroughly clean all plumbing fixtures, hardware, and floors. Carpet shall be vacuum cleaned. To the maximum extent that is reasonably possible, each Contractor shall keep the interior of the building free from waste, combustible material, and debris at all times.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process, or product is 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, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. 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. This indemnity is limited in amount to the degree of fault of the Contractor, as required by MCLA 691.991.

§ 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** This indemnity is not limited by a consequential damage or other damage waiver, if any, in any of the Contract Documents.~~

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 ~~and identified as such in the Agreement.~~

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

~~**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will, subject to section 2.1, represent the Owner's best interests during construction until the date the Architect issues the final Certificate for Payment. The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.~~

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will

not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.2.1 The Owner may deduct from the Contract Sum the Owner's cost for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and

assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and 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.

§ 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~~ accordance with the standard of care specified in the Architect's agreement with the Owner.

~~§ 4.2.13 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 ~~13~~ The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 ~~A Subcontractor is a person or entity who agrees with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor. 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. Within ~~14-30~~ 14 days of receipt of the information, the Architect ~~or Owner~~ 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 ~~or Owner~~ to provide notice within the ~~14-30~~ 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, 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.

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

- .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 that arise after the effective date of the Owner's acceptance.

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors ~~retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.~~

§ 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~~ agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any

revisions to its construction schedule deemed necessary by the Owner after a joint review ~~and mutual agreement~~. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

~~§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.~~

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute ~~an~~ the Contractor's 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~~ is responsible for discrepancies ~~or~~ and defects in the construction or operations by the Owner or Separate Contractor that are ~~not either~~ apparent or reasonably should have been apparent, to the Contractor.

§ 6.2.3 The Contractor shall reimburse the Owner within 45 days after written demand for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

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

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 or Construction Change Directive, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Owner's right to direct changes in the Work includes the right to reasonably require that identified portions of the Work be completed on a date or dates earlier than the date fixed in the Contract Documents for the completion of the whole of the Work. The Contractor is entitled to an adjustment in the Contract Sum and Contract Time due to the impact of such changes on the same terms as other changes in the Work. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.~~

~~§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.~~

§ 7.1.32 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written agreement signed by the Owner and the Contractor that changes the Work. A Change Order is not effective unless it addresses all of the following:

- .1 A description of 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 Unless the Change Order specifies otherwise, it includes all changes to the Work and is a final agreement on changes to the Contract Time and Contract Sum, if any, relating to the change in the Work. § 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.

§ 7.2.3 The Contractor waives its rights to any increase in the Contract Sum or the Contract Time to the extent it begins work on any changes before a Change Order is effective, except for changes directed by the Owner under a Construction Change Directive under section 7.3 or as a minor change under section 7.4.

§ 7.3 Construction Change Directives

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the Owner shall base 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 Owner shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the A133, or if no such amount is set forth in the A133, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the

Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar
taxes, directly related to the change.

If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom,
workers' compensation insurance, and other employee costs approved by the Architect;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or
consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or
others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related
to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15 except for adjustments agreed to under section 7.3.7.

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

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may include in its Applications for Payment the undisputed amounts for changes in the Work. Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Owner may in writing order the Contractor to make 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. 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 may make a claim under Article 15. If the Contractor performs the Work set forth in the order for a minor change without prior notice to the Owner that such change will

affect the Contract Sum or Contract Time is a waiver of the Contractor's right to any adjustment to the Contract Sum or extension of the Contract Time. The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement A133.

§ 8.1.3 The date of Substantial Completion is the date certified/determined by the Architect/Owner 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. If a deadline falls on a Saturday, Sunday, or holiday on which banks close, the date extends through the end of the next day that is not a Saturday, Sunday, or holiday on which banks close.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are enforceable as written. Failure to meet a deadline for notice or other action is a default that gives the non-defaulting party all available remedies. In addition, unless specified otherwise as to a deadline for notice or other action to be taken by the Contractor, the Contractor's late notice or other late action waives the Contractor's claim for an increase in the Contract Sum or the Contract Time or both. By executing the Agreement, the Contractor represents that the Contract Time is a reasonable period for performing the Work. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1

The Contract Time shall be extended for the time necessary to compensate for a delay in the commencement or progress of the Work, but only to the extent that the delay is caused by one or more of the following:

- .1 an act or neglect of the Owner or of a separate contractor employed by the Owner;
- .2 changes in the Work that the Owner orders;
- .3 causes that meet all of the following: they are beyond the Contractor's control, they are not due to the fault, neglect, act or omission on the part of the Contractor or its Subcontractors, and they were not anticipated and could not reasonably have been anticipated by the Contractor exercising the skill, care and diligence of contractors of similar reputation, qualifications and experience performing work on projects;
- .4 the Owner's written authorization pending resolution of dispute under the Contract Documents;
- .5 other causes that the Owner determines may justify delay. If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by 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; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by

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~~other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.~~

~~§ 8.3.2 Delays for weather are beyond the Contractor's control only to the extent that the weather is significantly worse in duration or severity than what could reasonably have been anticipated for any 10-year period in that vicinity. Claims relating to time shall be made in accordance with applicable provisions of Article 15.~~

~~§ 8.3.3 Claims relating to the Contract Time shall be made in accordance with applicable provisions of Article 15. This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~

~~§ 8.3.4 The Contractor must notify the Owner promptly after the Contractor has information (or reasonably should have had information exercising the skill, care and diligence of similar contracts of similar reputation, qualifications and experience performing work on similar projects) that a delay might occur that would qualify for an adjustment of the Contract Time under this section 8.3.1.~~

~~§ 8.3.5 An extension of Contract Time may be made only by Change Order.~~

~~§ 8.3.6 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

~~§ 9.1.1 The Contract Sum is stated in the Agreement A133 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 Sum is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

~~§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.~~

~~§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.~~

~~§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless (a) such Work has been performed by others whom the Contractor intends to pay, and (b) the Contractor specifically notifies the Owner and the Architect in the Application for Payment.~~

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

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

§ 9.4 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 and the Owner may withhold a payment (whether or not the Architect has issued a Certificate of Payment for that payment) in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be made or if the Owner determines that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Contract documents or that there are other defaults under the Contract Documents. 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 Owner may withhold payment and 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 to anyone else;

- .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.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 ~~If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue checks directly to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered, or may issue joint checks to the Contractor and that Subcontractor or supplier for that Work. If the Owner makes payments by direct check or joint check, the Owner shall promptly notify the Architect and the Contractor, but the Owner's failure or delay in giving notice does not waive the Owner's right to make payment. If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.~~

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by ~~appropriate written~~ agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

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

§ 9.6.8 The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier to the extent that the Owner has paid the Contractor the amount claimed by the Subcontractor or supplier. 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. ~~Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.~~

§ 9.6.9 Progress payments will be made in accordance with Act 524 of 1980, MCLA 125.1561-.1566. The following limits on retainage apply, in accordance with MCLA 125.1563: After the work is 50% in place, additional retainage shall not be withheld unless the Owner determines that the Contractor is not making satisfactory progress, or for other specific cause relating to the Contractor's performance under the contract. If the Owner so determines, the Owner may retain not more than 10% of the dollar value of work more than 50% in place.

§ 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 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, and a non-temporary certificate of occupancy has been issued by the governing local jurisdiction. If at any time the Contractor becomes aware or has reason to believe that Substantial Completion will fail to occur on or before the scheduled Substantial Completion date, Contractor must immediately notify Owner with the reason for that belief and recommended corrective action to overcome that failure.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time (not to exceed 30 days after Substantial Completion) 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 Work that is incomplete or not in accordance 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 if that occupancy or use is consented to by the Contractor and 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 agreed in writing on 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. 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. 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 in writing by the Owner and the Contractor, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of that portion or any other portion of the Work. 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-Contractor's obligations~~ 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. Final completion is the date when all of the Work is fully completed, including punch list items, and is to occur as soon as possible, but in no event more than 30 days after Substantial Completion.

§ 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, and (7) other closeout requirements reasonably requested by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall ~~refund-reimburse~~ the Owner on demand for all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all damages, 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.
- .5 latent defects; or
- .6 indemnity under section 3.18.

§ 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.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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

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§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition and shall protect the Work from adverse weather where possible.

§ 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, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. Failure or delay in giving notice does not waive the claim except to the extent that the notice recipient is materially prejudiced by the failure or delay.

§ 10.2.9 The Contractor shall assume the responsibility for the protection of all Work and shall repair and restore any and all damage to the Work. But Contractor is not responsible for damage to the Work performed by Owner's own forces or by Owner's separate contractors.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents 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.

§ 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. By Change Order, the Contract Time shall be extended 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 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.

§ 10.3.5 The Contractor shall ~~reimburse-indemnify~~ 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, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 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-indemnify~~ 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 below~~. 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, 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.

a. Commercial General Liability:

i. Commercial General Liability including premises/operations, independent contractors, broad form property damage, personal/advertising injury, blanket contractual liability (including coverage for Contractor's indemnity in section 3.18), fire and explosion legal liability, explosion/collapse/and underground hazard coverage, and products/completed operations coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) Project Specific Aggregate; such policy shall be an occurrence policy and not a claims-made policy. This insurance shall also include the following: (i) contractual liability insuring the indemnification obligations assumed by Contractor under the Agreement; (ii) independent Contractor's coverage; (iii) underground explosion and collapse coverage; (iv) broad form property damage liability coverage; (v) a separation of insureds provision; (vi) fire damage legal liability in an amount equal to the value of the Owner's floor area; (vii) severability of interest; and (viii) blanket waiver of subrogation. The additional insured endorsement shall extend coverage to the contractual liability and completed operations coverage. A copy of the additional insured endorsement must be given to Owner upon request. Products and completed operations insurance shall be maintained for a minimum of 10 years after final payment with evidence of such coverage being provided on an annual basis.

ii. This coverage must be primary and non-contributory with Owner's insurance.

b. Auto Liability:

i. Automobile Liability including contractual liability coverage for all owned, hired, and non-owned autos with a combined single limit not less than One Million Dollars Combined Single Limit.

c. Workers' Compensation:

i. Workers' Compensation coverage for its employees or contractors with statutory limits. The Contractor shall waive all rights of subrogation under this policy.

d. Employer's Liability:

i. Employers' Liability coverage with limits of One Million Dollars (\$1,000,000) per incident.

e. Umbrella Liability: \$5,000,000; maximum retention of \$10,000.

f. All Risk property insurance for replacement cost of Contractor's property, tools and equipment, whether owned or leased, brought onto Owner's premises. The Contractor shall waive all rights of subrogation against

Owner for losses covered under this policy. This waiver shall also apply to any deductible assumed by Contractor under this policy.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. All coverage must be written with carriers with an AM Best rating of A or better. Coverages, written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Claims-made policies shall remain in effect 10 years after final payment. All of Contractor's policies must be primary and shall not contribute with any insurance maintained by Owner.

§ 11.1.3 Certificates of insurance acceptable to the Owner (and, at Owner's request, copies of policies and all endorsements) shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage, auto liability coverage, and umbrella coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds; and (2) the Owner as an additional insured during the Contractor's completed operations.

§ 11.1.5 The Contractor shall assume the risk of loss and damage to its machinery, tools and equipment, and field offices (including contents). The Contractor shall also assume the risk of loss and damage to its employees' tools and effects. The Owner shall in no event be liable for any such loss or damage to such property, nor shall the Owner be liable for any such loss or damage to any property of subcontractors.

§ 11.1.6 Contractor shall require all Subcontractors retained by Contractor on the Project to maintain the following minimum levels of insurance and shall provide to Owner certificates of insurance evidencing same before beginning any Work in connection with the Project:

Workers Compensation: per statutory requirements and subject to statutory limits

Employers Liability: \$1,000,000 per accident for bodily injury by accident and \$1,000,000 per employee and policy limit for bodily injury by disease

Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 in the aggregate

Auto Liability: \$1,000,000 per accident

Umbrella (for subcontracts in excess of \$500,000): \$10,000,000 combined single limit per occurrence and in the aggregate

Contractor shall require that subcontractors of every tier shall (1) include the Owner, the Architect and the Architect's consultants as additional insureds with respect to their commercial general liability and excess liability coverages and (2) provide a waiver of subrogation in the additional insureds favor for all coverage required hereunder. Contractor shall provide Owner with subcontractor certificates of insurance upon request.

§ 11.1.2-7 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.

§ 11.1.3-8 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.

§ 11.1.4.9 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

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

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (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-Contract Documents~~ 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, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would

otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 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 but only to the extent of insurance proceeds received by the Owner.

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

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon Promptly after 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.

§ 11.6 Self Insurance. The Owner may satisfy all of its insurance requirements through a self-insurance program.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

shall be at the Contractor's expense. ~~If prior to the date of Substantial Completion, Contractor, or any person or entity for whose acts or omissions Contractor is responsible, uses or damages any portion of the Work, including without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, Contractor shall cause such item(s) to be restored to its condition before the damage. This must be done at no expense to the Owner except to the extent that the damage is caused by the Owner or anyone Owner is responsible for.~~

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 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.

§ 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. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

§ 13.2.1 ~~The Owner and Contractor respectively bind themselves 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 all of its rights under the Contract Documents without written consent of the other, which may not be withheld except for good cause. An attempted assignment without the required consent is ineffective. An assignment of rights has no effect on the assigning party's obligations, except that the Owner is relieved from all of its obligations~~

~~accruing after the date of a permitted assignment of all of its rights to a successor owner. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.~~

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an affiliate, a successor owner of the Project, or to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. ~~The Contractor shall execute all consents reasonably required to facilitate the assignment.~~

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise ~~provided~~ agreed, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. ~~The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded.~~ The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

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

~~§ 13.6 Nothing in this Agreement is a waiver of the Owner's defense of governmental immunity under Michigan law.~~

~~§ 13.7 The prevailing party in litigation is entitled on demand to reimbursement from the other party of its litigation expenses, including reasonable attorney fees.~~

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, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within ~~the time stated in the Contract Documents; or 30 days after receiving notice of nonpayment from the Contractor.~~
- ~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a 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~~Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of a substantial or material 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~~the Contract 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.

§ 14.2.4 ~~If the costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner exceed the unpaid balance, the Contractor shall pay the difference to the Owner on demand. This obligation for payment shall survive termination of the Contract. 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.~~

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

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

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

§ 14.4 Termination by the Owner for Convenience

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

§ 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 and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; out-of-pocket costs incurred by the Contractor by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement A133.

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 to enforce one or more requirements in the Contract Documents. The responsibility to substantiate Claims shall rest with the party making the Claim. The Owner need not make a Claim, however, to impose liquidated damages in accordance with the Contract Documents. The making of any progress payment or final payment by the Owner does not waive a Claim by the Owner against the Contractor, whether or not the Claim was known by the Owner before making the payment. Final final payment by the Owner is, however, a waiver except as stated in section 9.10.4. 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 give notice of all Claims and commence all causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, within the statute of limitations specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this statute of limitations and 10-year limit. The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be made by notice under section 1.6 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 a different time is specified in the A133 or this A201, Claims by the Contractor under this Section 15.1.3.1 shall be made within 21 days after the later of (a) occurrence of the event giving rise to such Claim or (b) the date the Contractor first recognizes, or should reasonably have first recognized, the condition giving rise to the Claim. Unless specified otherwise in the Contract Documents, a delay in making a claim does not bar a claim, except to the extent that the delay causes loss or damage to the other party or adversely affects the other party's ability to defend or mitigate the claim. Claims by the Contractor for an increase in the Contract Sum or Contract Time must also comply with sections 15.1.5 and 15.1.6. Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated ~~made~~ by notice under section 1.6 to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 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~~ under the Contract Documents 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 under section 15.2, 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 ~~initial~~ decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. ~~Failure or delay in giving this notice waives 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 provided in Section 15.1.3 shall be given ~~before proceeding to execute the portion of the Work that is the subject of the Claim.~~ ~~Failure or delay in giving this notice waives the Claim.~~ 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, met the requirements of section 8.3~~ and had an adverse effect on the scheduled construction.

§ 15.1.7 Special Dispute Resolution

~~As MCLA 125.1564 requires, the Owner at its option may submit the following disputes to an agent selected under 125.1564:~~

~~a. At any time during the term of the Contract, to determine whether there has been a delay for reasons that were within the control of the Contractor, and the period of time that delay has been caused, continued, or aggravated by actions of the Contractor.~~

~~b. At any time after 94% of the Work is in place, whether there has been an unacceptable delay by the Contractor in the performance of the remaining 6% of Work under the Contract. The agent shall consider the terms of the Contract and the procedures normally followed in the industry and shall determine whether the delay was for failure to follow reasonable and prudent practices in the industry for completion of the Work.~~

~~This dispute resolution process shall be used only for the purpose of determining the rights of the parties to retained funds and interest earned on retained funds and is not intended to alter, abrogate, or limit any rights with respect to remedies that are available to enforce or compel performance of the terms of the contract by either party.~~

§ 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 (~~hazardous materials~~), 10.4 (~~emergencies~~), and 11.5 (~~settlement of insured loss~~), shall be referred to the Initial Decision Maker for initial decision. The ~~Architect-Owner~~ will serve as the Initial Decision Maker, unless otherwise indicated in the ~~Agreement A133~~. 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-But, 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 ~~either~~ unable to resolve the Claim ~~if because~~ the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or ~~if the Initial Decision Maker concludes that has concluded~~, 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. This information is at the Initial Decisions Maker's expense unless otherwise approved by the Owner. If done at the Owner's expense, that expense may be recovered by the Owner as~~

~~damages if Owner prevails on the Claim. 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 to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~

~~**§ 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 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 and request the surety's assistance in resolving the controversy. 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, including initial decisions by the Initial Decision Maker, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

~~**§ 15.3.2** The parties shall endeavor to resolve their Claims by facilitated mediation using a single mediator chosen by the parties. A request for mediation shall be made in writing and delivered to the other party to the Contract. 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 30 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to~~

file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.43 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. Disputes not resolved by mediation may be resolved by litigation, which shall be conducted without a jury.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

EXHIBIT B – Breakdown of General Conditions

	REQUIRED OF CM/GC			
	Pre-Construction Services Fee	Construction Services Fee	General Conditions	Direct Cost of Work
PHASE: PRE-CONSTRUCTION				
REVIEW DESIGN CONCEPTS	X			
DEVELOP BID PACKAGES/SUB-CONTRACTING STRATEGY	X			
BUILDING SYSTEMS RECOMMENDATIONS	X			
CONSTRUCTION FEASIBILITY RECOMMENDATIONS	X			
PROJECT MASTER SCHEDULING	X			
INFORMAL AND FORMAL VALUE ENGINEERING	X			
ENERGY USE ANALYSIS AND RECOMMENDATIONS	X			
PRELIMINARY TOTAL COST FEASIBILITY REVIEW	X			
PHASE: PROJECT BUDGETING AND COST CONTROL				
CONSTRUCTION COST BUDGET	X			
DESIGN DEVELOPMENT PHASE ESTIMATES	X			
CASH FLOW PROJECTIONS	X			
CHANGE ORDER ESTIMATES, PROCEDURES			X	
SET-UP COST ACCOUNTING			X	
SET-UP REPORTING METHODS			X	
SET-UP PAYMENT PROCEDURES			X	
CONTINUAL PROJECT COST MONITORING			X	
PHASE: SUB-CONTRACTING SELECTION AND PURCHASING				
RECEIVE BIDS	X			
ANALYZE BIDS	X			
RECOMMEND AWARD	X			

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	REQUIRED OF CM/GC			
	Pre-Construction Services Fee	Construction Services Fee	General Conditions	Direct Cost of Work
VERIFY UNIT COSTS	X			
PREPARE CONTRACTS	X			
ORIGINATE RFIs			X	
VERIFY CORRECTNESS OF QUANTITIES AND PRICES OF CHANGE ORDER REQUESTS			X	
PHASE: CONTRACT DOCUMENTS COORDINATION				
CONSTRUCTIBILITY REVIEW AND RECOMMENDATIONS	X			
SUBCONTRACTOR WORK SCOPING	X			
RESPONSIBILITY FOR: SAFETY PRECAUTIONS			X	
SAFETY PROGRAMS			X	
TEMPORARY FACILITIES			X	
COMMON USE EQUIPMENT			X	
COMMON USE SERVICES			X	
REVIEW FOR: JURISDICTIONAL OVERLAP	X			
INCLUSION OF ALL WORK	X			
PHASE CONSTRUCTION COORDINATION	X			
IDENTIFY LONG LEAD ITEMS	X			
OBTAIN AGENCY APPROVALS	X			
PHASE: CONSTRUCTION PHASE STAFF				
PROJECT MANAGER			X	
PROJECT SUPERINTENDENT			X	
FIELD/PROJECT ENGINEER			X	
SCHEDULER			X	
SAFETY ENGINEER			X	
PHASE: TEMPORARY FACILITIES				
SAFETY EQUIPMENT AND FIRST AID SUPPLIES			X	
HANDRAILS AND TOE BOARDS			X	
OPENING PROTECTION			X	

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	REQUIRED OF CM/GC			
	Pre-Construction Services Fee	Construction Services Fee	General Conditions	Direct Cost of Work
TEMP FIRE EXTINGUISHERS			X	
OFFICE OR TRAILER RENTAL			X	
TEMP PROJECT SIGNS			X	
TEMP CONSTRUCTION FENCING			X	
TEMP BARRICADES			X	
TEMPORARY OFFICE			X	
TEMPORARY TOILETS			X	
PHASE: ON-SITE UTILITIES AND SERVICES				
TEMPORARY POWER SERVICE			X	
POWER SERVICE			X	
TEMP HEATING			X	
TEMPORARY WIRING				X
LIGHT BULBS				X
DAILY CLEAN-UP			X	
WEEKLY TRASH-REMOVAL			X	
FINAL CLEAN-UP			X	
DUMP PERMITS AND FEES			X	
DEBRIS HAULING/REMOVAL				X
DUST CONTROLS				X
STREET SWEEPING			X	
PHASE: ON-SITE EQUIPMENT				
AUTOMOBILE AND FUEL			X	
FLATBED TRUCK AND FUEL			X	
AIR COMPRESSOR AND FUEL				X
TIRES AND MAINTENANCE COST			X	
FORKLIFT OPERATOR				X
MATERIAL HOIST OPERATOR			X	
PHASE: REPRODUCTION/PRINTING AND DATA PROCESSING				
POSTAGE AND EXPRESS COSTS			X	
AS-BUILT DOCUMENTS			X	
SUBCONTRACT AGREEMENT FORMS	X			

Request for Proposal

	REQUIRED OF CM/GC			
	Pre-Construction Services Fee	Construction Services Fee	General Conditions	Direct Cost of Work
SCHEDULE REPORT FORMS			X	
ESTIMATING FORMS	X			
COST REPORTING FORMS	X			
REFERENCE MATERIALS			X	
SHOP DRAWING PRINTING				X
DATA PROCESSING		X		
MAINTENANCE AND OPERATIONS MANUALS				X
PHASE: QUALITY CONTROL				
WARRANTY INSPECTIONS		X		
AIR AND WATER BALANCING				X
END USER ON-SITE TRAINING				X
PREPARE OPERATION/MAINTENANCE MANUALS				X
PHASE: PERMITS AND SPECIAL FEES				
STORAGE YARD RENTAL	N/A			
BLDG SIGN PERMITS				X
BUILDING PERMITS				X
PLAN CHECK FEES				X
GAS AND POWER SERVICE CHARGE (TEMPORARY)			X	
CONTRACTORS LICENSES		X		
CONSTRUCTION EQUIPMENT LICENSES		X		
CONSTRUCTION EQUIPMENT PERMITS				X
PHASE: INSURANCE AND BONDS				
BUILDERS RISK INSURANCE (to be provided by Client)				
GENERAL LIABILITY, INCLUDING AUTOMOBILE			X	
PRODUCT LIABILITY			X	
EXCESS LIABILITY COVERAGE			X	
WORKERS COMPENSATION			X	
FICA INSURANCE			X	

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	REQUIRED OF CM/GC			
	Pre-Construction Services Fee	Construction Services Fee	General Conditions	Direct Cost of Work
UNEMPLOYMENT			X	
PAYMENT BOND			X	
PERFORMANCE BOND			X	
STATE/LOCAL BONDS				X
SUBCONTRACTOR BONDS				X
PHASE: OTHER COSTS				
CONSTRUCTION EQUIPMENT				X
CONSTRUCTION SERVICES LABOR				X
CONSTRUCTION MATERIALS				X
GENERAL OVERHEAD COST		X		
PROFIT MARGIN		X		
STATE REQUIRED INSPECTION				X
PHASE: OFF-SITE SERVICES				
PROJECT EXECUTIVE	X	X		
LEGAL - BASIC SERVICES	X	X		
ACCOUNTING		X		
PURCHASING	X			
SAFETY OFFICER		X		
ADMINISTRATORS	X	X		
BENEFITS AND VACATIONS	X	X		

EXHIBIT C – Insurance Requirements

See Agreement A133

EXHIBIT D – Bid Form

Included with this RFP is an MS Excel document that captures the fee categories. Please populate this form and return it in MS Excel form as part of your RFP response.

Calculate fees and general conditions based on the following assumptions:

1. Pre-construction duration: 6/11/18 through 2/15/2019
2. Construction duration: 12 months
3. FF&E / Move: 2 months

EXHIBIT E – Clarifications

Respondents will also take into consideration the following clarifications:

1. It is anticipated that the Project shall be completed in one phase. Architect though may issue early site and foundation package to start construction early.
2. Construction will take place at least (5) days per week (M-F). Include any overtime or weekend work to ensure the required milestone dates are met.
3. Construction water and electricity utility costs to be provided by the CMGC. CMGC shall include costs to install any temporary facilities.
4. Should the CMGC fail to adhere to the schedule, the CMGC shall furnish such labor and/or services, or work sufficient overtime as may be necessary to make progress conform to schedule. Any premium time costs shall not be reimbursable unless previously approved in writing by Client and/or JLL.
5. All required low voltage wiring for voice / data systems wiring will be installed by the CMGC with a low voltage or technology wiring vendor. It will be the responsibility of the CMGC to coordinate with the KDL and Client.
6. The building will be fitted out with new furniture and accessories. The layout and selection of this furniture will occur under the scope of the furniture dealer. All required rough-in infrastructure for the Client installed furniture will be the responsibility of the CMGC including final connection of furniture & equipment. Furniture power/data whips will be provided by the Furniture Vendor.
7. All required audio/video systems will be installed by the CMGC with an A/V vendor. It will be the responsibility of the CMGC to coordinate with KDL and Client. All raceways, power, and in-wall blocking shall be provided by the CMGC.
8. All required security/ access control systems will be installed by the CMGC with a security vendor. All electrified hardware shall be the furnished and installed by the security

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contractor. It will be the responsibility of the CMGC to coordinate with KDL and Client, including review and coordination of the doors & hardware.

9. Note any exceptions your firm takes to this Request for Proposal.
10. Client and JLL may elect to meet with bidders after the receipt of the proposals. The selection of these short list bidders would be based on clarity of the proposal, level of service, responsiveness, project team, references and costs. The final selection will be made after thorough review of the proposals and short list interviews.

EXHIBIT F – Additional Requirements

1.	Proposal	This document should not be duplicated except as necessary to prepare Respondent's response. This document should not be disclosed or distributed to any third party without the express written consent of CLIENT.
2.	Terms and Conditions of the RFP	<p>All proposals and any other material submitted in response to this RFP will become the property of CLIENT.</p> <p>Acceptance of a proposal does not commit CLIENT to award a contract to any Respondent, regardless of whether or not the proposal meets all the requirements stated in this RFP, nor does it limit CLIENT's right to negotiate in its best interests. CLIENT reserves the right to reject any or all proposals and price quotations received for any reason whatsoever. Neither the receipt of any proposal, nor failure to reject any proposal shall impose any legal obligation on CLIENT.</p> <p>CLIENT reserves the right to select and negotiate with those companies it deems qualified for competitive bidding and to terminate negotiations at any time without incurring liability.</p> <p>CLIENT reserves the right to enter into discussions and/or negotiations with one or more qualified Respondents at the same time.</p> <p>CLIENT reserves the right to terminate the entire RFP process at any time without incurring any liability.</p> <p>Respondent is not authorized to assign this RFP to any other entity without CLIENT's prior written approval.</p> <p>Mandatory requirements, notices, and other critical information shall be designated as such and shall be displayed in this format.</p> <p>Non compliance with timelines, mandatory requirements or other critical elements may cause Respondent disqualification from this RFP.</p> <p>If a Respondent is unwilling or unable to meet any RFP requirement, an explicit statement to that effect must be made in the proposal as an exception.</p>
3.	Incurred proposal expenses	Respondent shall be responsible for its costs of preparing and responding to this proposal and shall not be compensated for labor

Request for Proposal

		or materials costs.
4.	Timing of the Validity of Proposals	This proposal shall be valid for a period of 90 days from the proposal date and may not be withdrawn once submitted.
5.	Silence of Specification	<p>The apparent silence of the specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality are to be used. Proof of specifications compliance will be the responsibility of the Respondent.</p> <p>This RFP is open to innovative and creative responses. Any ideas that would make attainment of CLIENT's stated objectives simpler, more efficient, and/or cost effective are expected and will be gladly accepted. Respondent is encouraged to respond to this RFP with creative ideas regarding product, process and systems as long as the RFP requirements are met.</p>
6.	Addenda to the RFP	If it becomes necessary to revise any part of this RFP, revisions will be provided in writing to all Respondents who are known to have received a copy of the RFP and will be sent via e-mail. Potential Respondents shall acknowledge, in writing, receipt of all amendments, addenda and changes issued in connection with this RFP by submitting an affirmative statement in the proposal.
7.	Potential Conflicts of Interest	Identify any potential conflicts of interest and submit a plan for eliminating them.
8.	Exceptions and other Information	Identify any exceptions, conditions, liabilities, or limitations Respondent's organization may have to any of the requirements of this RFP. Respondent should also submit any other information that Respondent deems necessary or relevant in assisting CLIENT in the evaluation of Respondent's proposal.
9.	Diversity	<p>Identify whether Company is an MBE (Minority Business Enterprise), WBE (Woman-owned Business Enterprise) or owned by a (DV) Disabled Veteran and provide date of certification.</p> <p>CLIENT will not discriminate on the basis of race, sex, religion, age, handicap, color, creed, sexual orientation or national origin with regard to obligations, work or services performed under the terms of any contract ensuing from this proposal.</p>

EXHIBIT G – Schedule

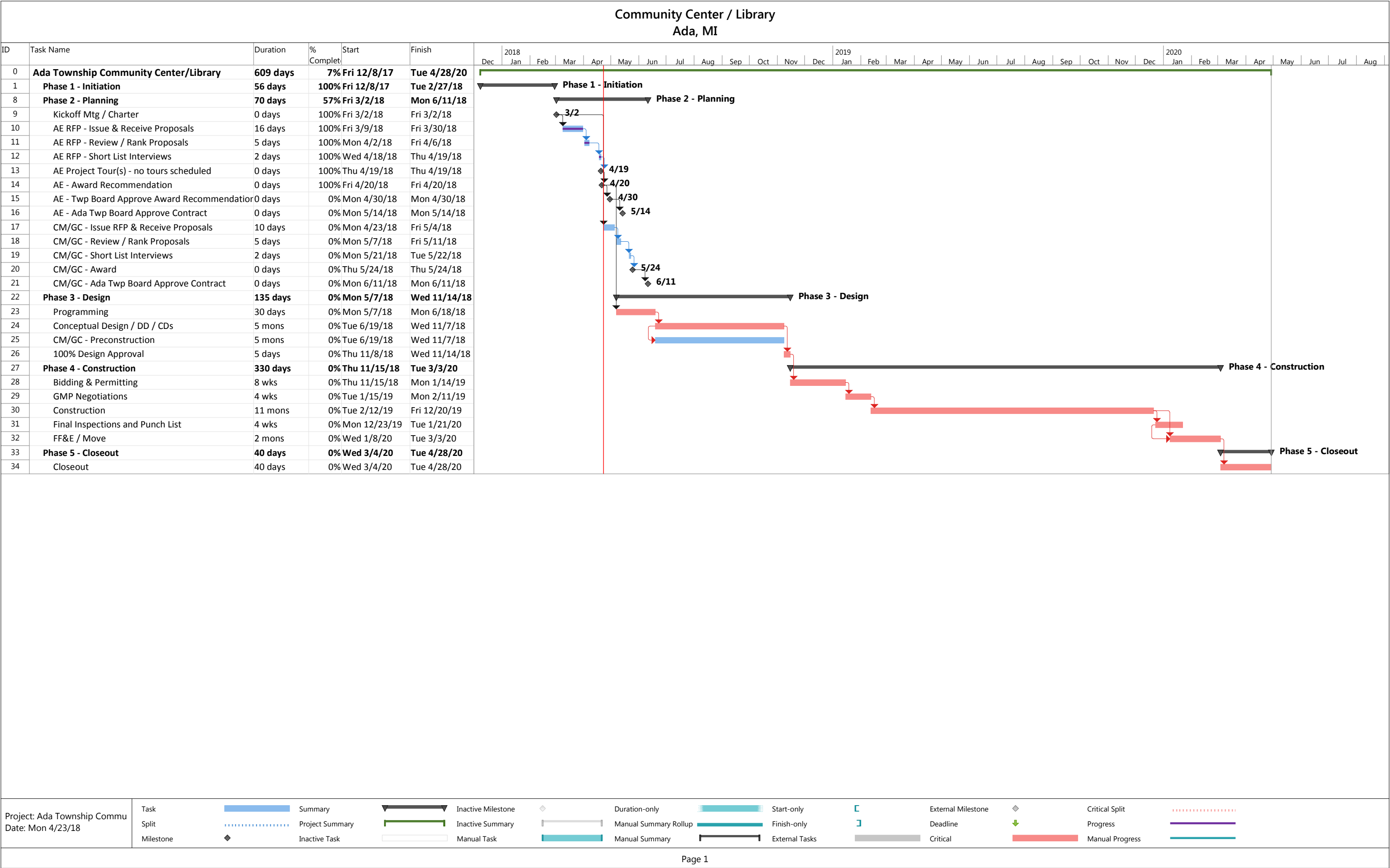
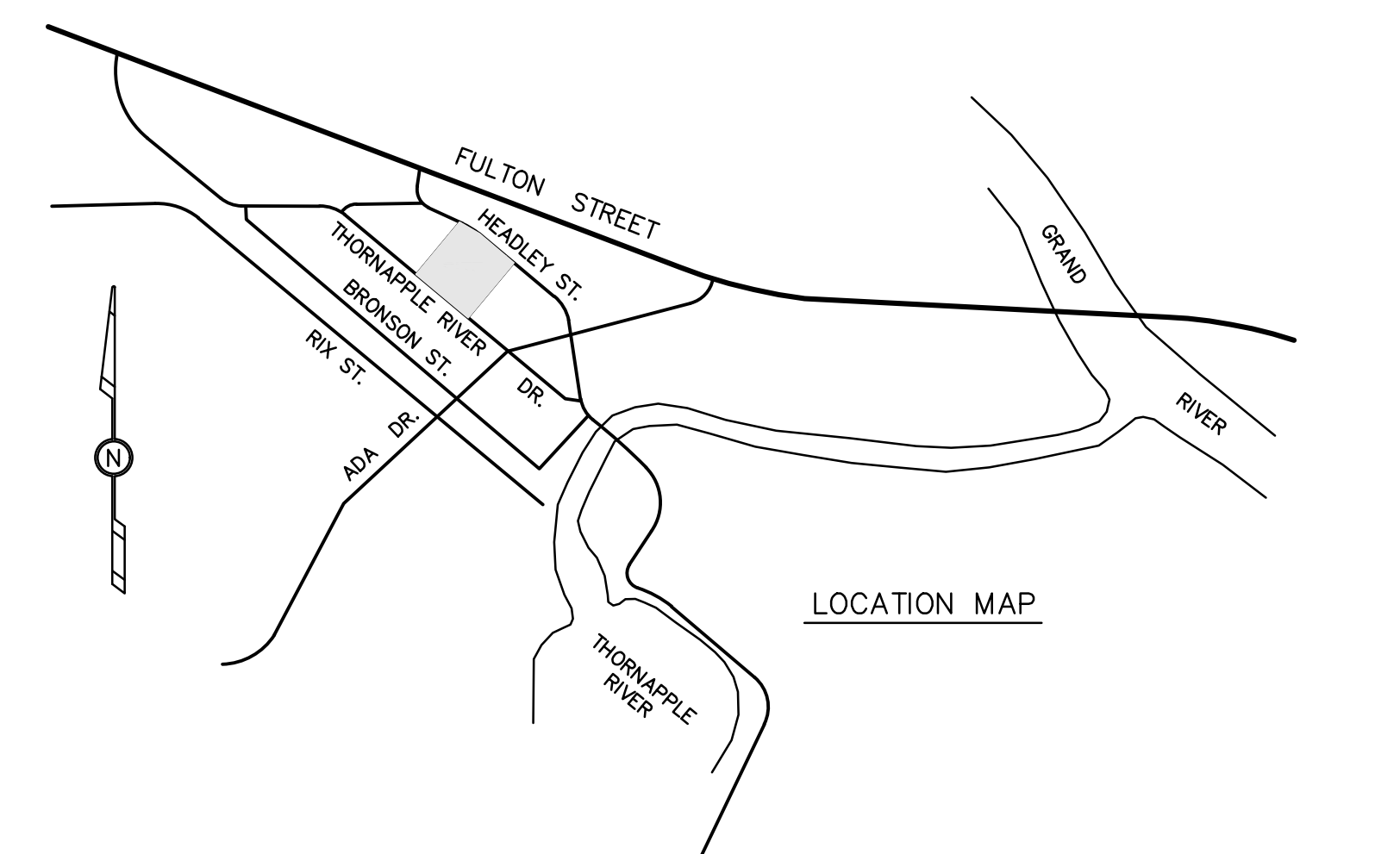
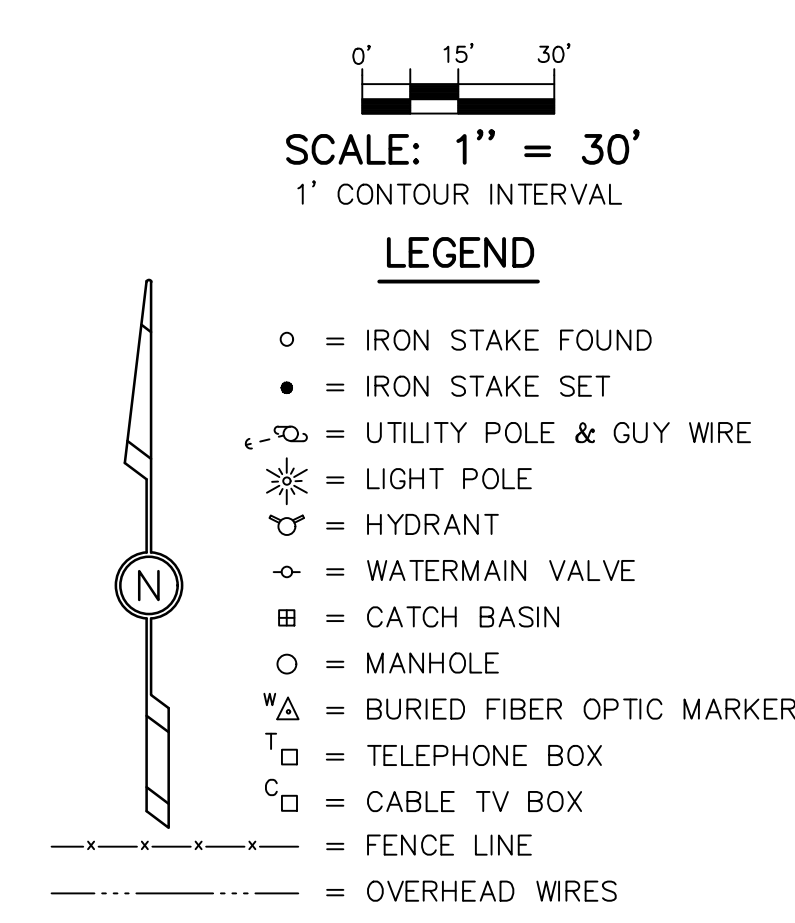


EXHIBIT H – Description Of Property



Description of Remainder Church Parcel - Parcel B:
 Part of Lots 1 through 6, Lampert's Addition (as recorded in Liber 24 of Plats on Page 24) and part of the NW 1/4 of Section 34, T7N, R10W, Ada Township, Kent County, Michigan, described as: Commencing at the most Easterly corner of Lot 6, Lampert's Addition; thence S39°50'28"W 27.29 feet along the Southeasterly line of said Lot 6 to the PLACE OF BEGINNING of this description; thence S39°50'28"W 104.72 feet along said Southeasterly line to the Northeasterly line of Lot 16, Lampert's Addition; thence N49°21'52"W 52.50 feet along said Northeasterly line to the most Northerly corner of said Lot 16; thence S39°59'38"W 136.05 feet along the Northwesterly line of said Lot 16 to the Northeasterly line of Thornapple River Drive; thence N49°19'48"W 32.83 feet along said Northeasterly line; thence N40°17'01"E 57.00 feet; thence N40°17'01"E 75.00 feet; thence N49°22'33"W 8.00 feet; thence N40°17'01"E 57.00 feet; thence S49°22'33"E 17.50 feet; thence N40°17'01"E 209.08 feet to the Southwesterly line of Relocated Headley Street; thence Southeasterly 32.40 feet along said Southwesterly line on a 265.00 foot radius curve to the right, the chord of which bears S52°50'01"E 32.38 feet; thence S49°21'52"E 4.38 feet along said Southwesterly line; thence S40°38'08"W 102.50 feet; thence S49°21'52"E 328.25 feet to the place of beginning.

Notes:
1. Bearings shown hereon are based on the State Plane Grid as recorded in Liber 297 of Surveys, Page 10.




<h1 style="margin: 0;">PROPOSED LAND DIVISION</h1>							
FOR: PROGRESSIVE AE ATTN: STEVE TIETSKA 1811 4-MILE RD. NE GRAND RAPIDS, MI 49525	RE: 7220 HEADLEY ST.						
IN: PART OF THE NW 1/4, SECTION 34, T7N, R10W, ADA TOWNSHIP, KENT COUNTY, MICHIGAN							
REVISIONS: 	<div style="text-align: center;">  <p style="margin: 0;">exxel engineering, inc. planners • engineers • surveyors 5252 Clyde Park, S.W. • Grand Rapids, MI 49509 Phone: (616) 531-3660 www.exxelengineering.com</p> </div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width: 33%; padding: 5px;">DRAWN BY: JJS</td> <td style="width: 33%; padding: 5px;">FILE NO.: S181003</td> </tr> <tr> <td style="padding: 5px;">APPROVED BY: BMF</td> <td style="padding: 5px;">SHEET 1 OF 1</td> </tr> <tr> <td style="padding: 5px;">DATE: 1/25/2018</td> <td></td> </tr> </table>	DRAWN BY: JJS	FILE NO.: S181003	APPROVED BY: BMF	SHEET 1 OF 1	DATE: 1/25/2018	
DRAWN BY: JJS	FILE NO.: S181003						
APPROVED BY: BMF	SHEET 1 OF 1						
DATE: 1/25/2018							
REMOVE PROP. BLDG. 4/19/2018							

EXHIBIT I – Envision Ada

For Reference Document, see <http://adamichigan.org/village>

EXHIBIT J – Parking Lot Lease

April ____, 2018

Ada Township
7330 Thornapple River Drive, SE
Ada, Michigan 49301
Attention: George Haga, Supervisor

Re: Parking Lease

To the Above:

This letter agreement ("**Agreement**") sets forth the agreement between The Community, an RCA Ministry in Ada ("**Landlord**") and Ada Township ("**Tenant**") regarding use of the parking lot (the "**Parking Lot**") located at Landlord's improved real estate commonly known as 7239 Thornapple River Drive, SE, Ada, Michigan and legally described on attached **Exhibit A** (the "**Church Property**") for short-term parking of non-commercial passenger vehicles by members of the general public ("**Public Parking**"). This Agreement only addresses the Public Parking, together with certain rights of Tenant to acquire the Church Property (addressed below), including Public Parking in connection with a seasonal farmer's market operated at the Church Property ("**Farmer's Market**") by Tenant's Downtown Development Authority ("**DDA**"), which Farmer's Market operation is authorized through a separate license agreement between Landlord and the DDA. This Agreement replaces and supersedes in its entirety a certain letter agreement dated June 16, 2009 between Landlord and the DDA (with Tenant's joinder), as amended by a letter agreement dated May 8, 2012 ("**Old Parking License**"), which Old Parking License is hereby terminated as between Landlord and Tenant and shall be of no further force or effect. On or before the date of this Agreement, Tenant shall deliver to Landlord a termination of the Old Parking License in form and substance satisfactory Landlord, signed by the DDA, which Landlord shall also sign and deliver.

1. Parking Lease; Term.

(a) Effective immediately, Landlord leases the Parking Lot to Tenant for Public Parking, and Tenant leases the Parking Lot from Landlord for Public Parking (the "**Lease**"). The Lease shall commence on May 1, 2018 (the "**Commencement Date**"), and continue for an initial period of 15 years, unless terminated in accordance with this Agreement (the "**Initial Lease Term**"). Upon its expiration, the Initial Lease Term shall automatically renew for a period of 10 years (if applicable, the "**First Lease Renewal Term**") unless Landlord or Tenant notifies the other, in a writing delivered at least 120 days before the expiration of the Initial Lease Term, that Landlord or Tenant, as applicable, does not desire

the First Lease Renewal Term to occur, in which case the Lease shall terminate at the end of the Initial Lease Term (unless sooner terminated in accordance with another provision of this Agreement). If the First Lease Renewal Term occurs as set forth above, then upon its expiration, the First Lease Renewal Term shall automatically renew for a period of 10 years (if applicable, the "**Second Lease Renewal Term**") unless Landlord or Tenant notifies the other, in a writing delivered at least 120 days before the expiration of the First Lease Renewal Term, that Landlord or Tenant, as applicable, does not desire the Second Lease Renewal Term to occur, in which case the Lease shall terminate at the end of the First Lease Renewal Term (unless sooner terminated in accordance with another provision of this Agreement). In this Agreement, the Initial Lease Term, the First Lease Renewal Term, if applicable, and the Second Lease Renewal Term, if applicable, are collectively called the "**Lease Term**."

(b) The Lease shall permit Public Parking: (1) in that portion of the Parking Lot depicted on attached **Exhibit B**; (2) Monday through Saturday of each week (but with no overnight parking); and (3) on a non-exclusive, "first come, first served" basis with Landlord, its agents, members, invitees, and licensees. Landlord shall notify Tenant if members of the general public violate the terms of the Lease (e.g., long-term parking or parking commercial vehicles), in which case Tenant shall promptly tow the vehicle(s) at issue from the Parking Lot, without expense to Landlord. Notwithstanding the foregoing, Landlord may use of the Parking Lot to the exclusion of Tenant and members of the general public: (i) on religious and national holidays, including, without limitation, Independence Day and Good Friday; (ii) when hosting the Farmer's Market or other community-wide events (e.g., the Ada Chili & Beer Festival), including any set-up and tear-down therefor; (iii) for weddings conducted at the Church Property; and (iv) in the event of a reasonable, unexpected use (e.g., a funeral) by Landlord. For scheduled events or services, Landlord shall endeavor to provide Tenant with one week's notice of Landlord's exclusive use of the Parking Lot. In addition to the foregoing limitations on Public Parking, Landlord may suspend Public Parking at the Parking Lot when the Parking Lot is being reconstructed, reconfigured, or repaired. Otherwise, Tenant's nonexclusive use of the Parking Lot for Public Parking shall not be disturbed by Landlord or third parties claiming through Landlord.

2. Net Rent; Landlord Work.

(a) Tenant shall pay Landlord annual rent ("**Rent**") in the amounts and for the time periods set forth on attached **Exhibit C** (which assumes the effectiveness of the First Lease Renewal Term and the Second Lease Renewal Term), payable in equal quarterly installments; provided, however, that Tenant may prepay up to one-year's Rent in advance. Each quarterly installment of Rent shall be payable in advance at Landlord's address set forth below, without setoff, on or before the first day of each January, April, July, and October, except that Tenant shall pay the first installment of Rent upon its execution of this Agreement, and Rent for any partial quarter shall be prorated. If Tenant fails to pay any Rent when due, Landlord may in its sole discretion impose a late charge equal to five percent of the Rent due.

(b) Notwithstanding anything to the contrary in this Agreement, except as expressly set forth in *Sections 4(a)* and *4(c)* below, it is the parties' intent that: (1) the Rent will comprise a net return to Landlord, with Tenant bearing any obligation to pay (and Tenant shall pay before delinquency) any property taxes that may arise as a result of Tenant's or the general public's use of the Parking Lot for Public Parking; and (2) Landlord shall be under no obligation whatsoever to make any alterations or improvements to the Parking Lot.

3. Condition of Parking Lot; Signage. For purposes of the Lease, Tenant accepts the Parking Lot and the Church Property in their current "**AS IS**" condition, with all patent and latent defects, if any. While acknowledging the foregoing, Landlord and Tenant further acknowledge that Geld LLC, a Michigan limited liability company ("**Geld**"), has agreed with Landlord to, at Geld's sole expense, reconstruct and reconfigure the Parking Lot, including installation of improved lighting, at or about the time Tenant finishes constructing a community center at Tenant's real estate adjacent to the Church Property (the "**Initial Parking Lot Reconstruction**"). The Initial Parking Lot Reconstruction is to be made in accordance with plans and specifications satisfactory to Landlord and Geld and in accordance with requirements of applicable governmental laws, codes, ordinances, and regulations ("**Applicable Law**"); provided, however, that Landlord shall consider Tenant's reasonable input on such plans and specifications. Tenant agrees that Landlord has no obligation to guaranty or warrant in any manner Geld's performance of the Initial Parking Lot Reconstruction. Tenant may, at its expense, install signage throughout the Village of Ada indicating that Public Parking is available at the Parking Lot.

4. Maintenance.

(a) Landlord shall maintain the Parking Lot in a good and clean condition, excluding snowplowing, snow removal, and ice removal for the Parking Lot and Landlord's sidewalks throughout the Church Property ("**Snow Removal**"), at standards consistent with Landlord's practices and procedures that existed prior to the date of this Agreement. If Tenant desires any maintenance, or maintenance at a more stringent standard, beyond that required of Landlord under the preceding sentence (e.g., resealing or restriping), then Tenant shall perform such maintenance at its expense.

(b) Tenant shall, at its expense: (1) perform the Snow Removal in a manner consistent with the practices and procedures applied to Ada Township's owned and leased properties and in accordance with requirements of Applicable Law; provided, however, that such practices and procedures shall, at a minimum, require the Snow Removal to occur: (A) within two hours after a weather event during which more than two inches of snow or one-half inch of ice accumulates at the Church Property; and (B) on Sundays (to be completed by 7:30 AM); and (2) maintain in good condition and repair, and in accordance with Applicable Law, each existing drive to the Parking Lot from the Headley Street right-of-way.

(c) Notwithstanding the foregoing, at such time and from time to time as Landlord and Tenant mutually determine that it is necessary to resurface or make other substantial repairs to the Parking Lot (e.g., beyond restriping or patching pot holes), which Landlord and Tenant currently anticipate will first occur on or about the 17th anniversary

of this Agreement, Landlord shall perform such resurfacing or other substantial repairs (each, a "**Future Parking Lot Reconstruction**") in accordance with plans and specifications that are mutually satisfactory to Landlord and Tenant and in accordance with Applicable Law. Landlord shall bear 15% of the cost of each Future Parking Lot Reconstruction, and Tenant shall bear 85% of the cost of each Future Parking Lot Reconstruction, payable within 30 days of Landlord's presentation of an invoice for the Future Parking Lot Reconstruction at issue.

5. Insurance; Indemnity; Release.

(a) Insurance. Upon signing this Agreement and on an annual basis thereafter (and in any event upon each renewal of a policy or change in insurance carriers), Tenant shall furnish Landlord with proof of liability insurance covering the use of the Parking Lot by members of the general public, regardless of their time of use (i.e., not limited to occurrences during the days and hours set forth in *Section 1(b)(2)* above), the terms of which shall provide at least \$1,000,000 of coverage and shall name Landlord as an additional insured; provided, however, that Landlord may require Tenant to increase the limit of such coverage from time to time to remain consistent with other projects of a similar nature in the general vicinity of the Church Property.

(b) Tenant's Indemnity. Tenant shall indemnify, hold harmless, and defend Landlord, its agents, members, and employees, from and against any loss, liability, cause of action, or claim for personal injury, property damage, or loss of life or property arising from the use of the Parking Lot by Tenant or by members of the general public (regardless of their time of use (i.e., not limited to occurrences during the days and hours set forth in *Section 1(b)(2)* above)) other than those using the Parking Lot in connection with Landlord-sponsored activities.

(c) Landlord's Indemnity. Landlord shall indemnify, hold harmless, and defend Tenant and its employees and agents from and against any loss, liability, cause of action, or claim for personal injury, property damage, or loss of life or property arising from use of the Parking Lot in connection with Landlord-sponsored activities.

(d) Release. To the extent covered by insurance, whether obtained for the purposes of this Agreement or otherwise, Tenant and Landlord each waives all rights of recovery against the other and all of their respective agents, members, employees, and guests arising from damage to the other's property or the claim of any third party with respect to the use of the Parking Lot. The indemnity, hold harmless, and defense obligations of this Agreement shall survive any termination of this Agreement. Nothing in this Section 5 is a waiver of Tenant's defense of governmental immunity.

6. Condemnation. If all or a material portion of the Parking Lot is taken by condemnation, Landlord or Tenant may terminate this Agreement by a written notice to the other. Any award from such condemnation shall pass to Landlord.

7. Default. If Tenant fails to perform any of its obligations under this Agreement within 30 days after receiving a written notice specifying the default, Landlord may terminate this

Agreement, cure the default at Tenant's expense, payable on demand, or pursue any other right or remedy available at law or in equity. Notwithstanding the foregoing, Landlord may immediately cure Tenant's failure to perform any required Snow Removal, in which case Landlord shall notify Tenant of such cure promptly after the fact, including any invoice for the Snow Removal cost, which Tenant shall promptly pay. If Landlord fails to perform any of its obligations under this Agreement within 30 days after receiving a written notice specifying the default, Tenant may terminate this Agreement, cure the default at Landlord's expense, payable on demand, or pursue any other right or remedy available at law or in equity. If any default cannot reasonably be cured within a 30-day period, then neither Tenant nor Landlord shall be in breach if it is diligently attempting to cure the default and cures the default within 45 days after receiving notice of the default.

8. Termination; Holding Over.

(a) Tenant may terminate this Agreement at any time by a 12-month written notice to Landlord. Landlord may terminate this Agreement: (1) in accordance with *Sections 6 and 7* above; or (2) in the event that Landlord elects to sell the Church Property to a third party or to perform construction at the Church Property that cannot reasonably accommodate continued use of the Parking Lot for Public Parking. Landlord shall endeavor to provide Tenant with a six-month written notice of any termination pursuant to item (2) above. If Tenant terminates this Agreement pursuant to the first sentence of this Section, or if Landlord terminates this Agreement pursuant to item (2) above, then neither Tenant nor Landlord shall have any obligation to reimburse the other as a result of such termination; provided, however, that any pre-termination liabilities of the parties shall survive such termination. Upon any termination of this Agreement (other than a termination pursuant to item (2) above where Tenant is the purchaser of the Church Property), Tenant shall, at its expense, remove all signage that it has installed within the Township or Village of Ada that indicates that the Parking Lot is available for Public Parking, and Tenant shall no longer advertise or otherwise permit Public Parking at the Parking Lot.

(b) Tenant acknowledges that its holding over beyond the termination of this Agreement will cause Landlord additional expense not contemplated by this Agreement. If Tenant holds over beyond the Lease Term, Rent shall increase to 125% of that amount required before Tenant's holdover tenancy, but the charging and paying of such amount shall not give Tenant any continued rights of possession to the Parking Lot beyond the period for which holdover rent is accepted by Landlord.

9. Right of First Offer; Right of First Refusal.

(a) If at any time during the Lease Term Landlord desires to sell the Church Property or any portion of the Church Property in an arm's-length transaction (e.g., not a gift or "bargain sale" to another church), then Landlord shall first notify Tenant in writing (the "**Right of First Offer Notice**"). The Right of First Offer Notice shall indicate Landlord's proposed selling price and other terms desired by Landlord. The Right of First Offer Notice will not be an offer to sell the Church Property, but only an invitation for Tenant to make a written offer, within 60 days from the date of the Right of First Offer Notice (the "**Offer Period**"), to purchase the Church Property (or

portion thereof) (the "**Right of First Offer**"). If Tenant fails to exercise the Right of First Offer during the Offer Period, then the Right of First Offer shall automatically terminate.

(b) If at any time during the Lease Term Landlord obtains a bona fide, arm's-length offer to purchase the Church Property or any portion of the Church Property (e.g., not a "bargain sale" offer from another church) that is acceptable to Landlord, or enters into any arrangement whatsoever with a bona fide, arm's-length purchaser for the transfer of ownership to the Church Property (or portion thereof) (collectively, "**Offer**"), Tenant shall have a right of first refusal (the "**Right of First Refusal**") to purchase the Church Property (or portion thereof) on the same terms and conditions that the bona fide, arm's-length purchaser proposes to purchase the Church Property (or portion thereof) from Landlord as set forth in the Offer. Within 15 days of Landlord's receipt of an Offer, Landlord shall deliver to Tenant a written notice stating Landlord's intention to accept the Offer, together with a copy of the Offer. Tenant shall have 60 days after receipt of such notice (the "**First Refusal Period**") to exercise the Right of First Refusal upon the same terms and conditions that the bona fide, arm's-length purchaser proposes to purchase the Church Property (or portion thereof) from Landlord as set forth in the Offer. At the closing between the parties contemplated by this *Section 9(b)*, if applicable, Tenant shall receive a credit against the purchase price of the Church Property equal to any prepaid Rent allocable to the period after the closing. If Tenant fails to exercise the Right of First Refusal during the First Refusal Period, then the Right of First Refusal shall automatically terminate.

(c) Notwithstanding anything to the contrary in this Agreement, Landlord and Tenant agree that the Right of First Offer and the Right of First Refusal shall each automatically terminate upon any termination of this Agreement, whether pursuant to *Sections 6, 7, or 8*.

10. Notice. Each notice under this Agreement shall be in writing and delivered to Tenant and Landlord either personally or by certified mail at the addresses shown in this Agreement or specified in a later notice.

11. Assignment; Third Parties. Tenant shall not assign its rights under this Agreement without Landlord's prior written consent, which Landlord may withhold in its sole discretion. Tenant may, however, (a) assign its rights under this Agreement to the DDA without Landlord's consent (but with prior written notice to Landlord), and (b) upon exercising either the Right of First Offer or the Right of First Refusal, assign the Right of First Offer or the Right of First Refusal, as applicable, to Geld or another wholly-owned subsidiary of Amway Corporation (but not a successor to Amway Corporation). This Agreement shall bind and benefit the parties, their successors, and permitted assigns. There are no third-party beneficiaries of this Agreement, including, without limitation, Geld, any such other wholly-owned subsidiary of Amway Corporation, or any member of the general public.

12. Subordination; Attornment; Estoppel Certificate.

(a) This Agreement and the Lease shall, at the option of Landlord or any holder of a mortgage on the Church Property ("**Lender**"), be subject and subordinate to any mortgage lien ("**Lien**") that may now exist or hereafter be placed upon the Church Property. While the provisions of this section are self-executing, Tenant agrees to execute and deliver for recording upon demand such further instrument subordinating this Agreement and the Lease to the Lien as Landlord or any Lender may reasonably request (which instrument shall include customary non-disturbance commitments by the Lender).

(b) Upon request of Landlord or any Lender, Tenant shall agree in writing that no action taken by such Lender to enforce its Lien shall terminate this Agreement or the Lease or invalidate or constitute a breach of any of its provisions, and Tenant shall attorn to such Lender, or to any purchaser of the Church Property at any foreclosure sale, or sale in lieu of foreclosure, for the balance of the Lease Term on all the terms and conditions of this Agreement. While the provisions of this section are self-executing, Tenant shall execute and deliver such documents necessary to affirm or give notice of such attornment.

(c) At the request of Landlord or any Lender, Tenant shall within 10 days deliver to Landlord or such Lender a certificate stating and certifying as of its date: (1) the date to which Rent has been paid; (2) whether there are then-existing any defenses against the enforcement of any of Tenant's obligations under this Agreement (and, if so, specifying the same); (3) if true, that this Agreement is unmodified and in full force and effect (or if there have been modifications, the specific nature of such modifications) and that Landlord is not in default under any provision of this Agreement (or if Landlord is in default, setting forth the exact nature of such default); and (4) such other information as Landlord or such Lender may reasonably request in connection with the landlord-tenant relationship established by the Lease.

13. Memorandum of Lease. Upon signing this Agreement, Landlord and Tenant shall also sign a memorandum/"short-form" of this Agreement, in recordable form ("**Lease Memorandum**"). Tenant may, at its expense, record the Lease Memorandum with the Kent County, Michigan Register of Deeds, providing record notice of this Agreement, including the Right of First Offer and the Right of First Refusal. Upon any termination of this Agreement, Landlord may, at its expense, terminate the Lease Memorandum by recording an affidavit of its termination with the Kent County, Michigan Register of Deeds.

14. Miscellaneous. This Agreement represents the entire understanding of Tenant and Landlord with respect to the Parking Lot and the Church Property and supersedes all prior and contemporaneous understandings of the parties with respect to the Parking Lot, including, without limitation, the Old Parking License. This Agreement may only be amended by a writing signed by Tenant and Landlord. The invalidation of one or more terms of this Agreement shall not affect the validity of the remaining terms, which shall be enforceable to the fullest extent allowed under Applicable Law.

[Signatures follow.]

If Tenant agrees with the terms of this Agreement, please have the authorized representatives of Tenant sign and date both originals of this Agreement where indicated below and return a fully executed original to Landlord. The second original is for Tenant. By signing this Agreement, each of Tenant and Landlord is representing to the other that it has taken all steps necessary to approve this Agreement and that the persons signing this Agreement on its behalf are authorized to do so.

THE COMMUNITY, AN RCA MINISTRY IN
ADA

By_____

Its_____

And by_____

Its_____

The Community
7239 Thornapple River Drive, SE
Ada, Michigan 49301

ACCEPTED AND AGREED:

Dated: April ____, 2018

ADA TOWNSHIP

By_____

George Haga, Supervisor

And by_____

Jackie Smith, Clerk

EXHIBIT A
(Church Property)

Part of Lots 1 through 6, Lampert's Addition (as recorded in Liber 24 of Plats on Page 24) and part of the NW 1/4 of Section 34, T7N, R10W, Ada Township, Kent County, Michigan, described as: Commencing at the most Easterly corner of Lot 6, Lampert's Addition; thence S39°50'28"W 27.29 feet along the Southeasterly line of said Lot 6 to the PLACE OF BEGINNING of this description; thence S39°50'28"W 104.72 feet along said Southeasterly line to the Northeasterly line of Lot 16, Lampert's Addition; thence N49°21'52"W 52.50 feet along said Northeasterly line to the most Northerly corner of said Lot 16; thence S39°59'38"W 136.05 feet along the Northwesterly line of said Lot 16 to the Northeasterly line of Thornapple River Drive; thence N49°19'48"W 322.83 feet along said Northeasterly line; thence N40°17'01"E 75.00 feet; thence N49°22'33"W 8.00 feet; thence N40°17'01"E 57.00 feet; thence S49°22'33"E 17.50 feet; thence N40°17'01"E 209.08 feet to the Southwesterly line of Relocated Headley Street; thence Southeasterly 32.40 feet along said Southwesterly line on a 265.00 foot radius curve to the right, the chord of which bears S52°52'01"E 32.38 feet; thence S49°21'52"E 4.38 feet along said Southwesterly line; thence S40°38'08"W 102.50 feet; thence S49°21'52"E 328.25 feet to the place of beginning.

ADH revisions 3/13/18

EXHIBIT B
(Parking Lot)

See attached map.

EXHIBIT C
(Rent Schedule)

Time Period	Annual Rent Amount
May 1, 2018 – March 31, 2019	\$22,916.67 (partial lease year)
April 1, 2019 – March 31, 2020	\$25,250.00
April 1, 2020 – March 31, 2021	\$25,502.50
April 1, 2021 – March 31, 2022	\$25,757.53
April 1, 2022 – March 31, 2023	\$26,015.11
April 1, 2023 – March 31, 2024	\$26,275.26
April 1, 2024 – March 31, 2025	\$26,538.01
April 1, 2025 – March 31, 2026	\$26,803.39
April 1, 2026 – March 31, 2027	\$27,071.42
April 1, 2027 – March 31, 2028	\$27,342.13
April 1, 2028 – March 31, 2029	\$27,615.55
April 1, 2029 – March 31, 2030	\$27,891.71
April 1, 2030 – March 31, 2031	\$28,170.63
April 1, 2031 – March 31, 2032	\$28,452.34
April 1, 2032 – March 31, 2033	\$28,736.86
April 1, 2033 – March 31, 2034	\$29,024.23
April 1, 2034 – March 31, 2035	\$29,314.47
April 1, 2035 – March 31, 2036	\$29,607.61
April 1, 2036 – March 31, 2037	\$29,903.69
April 1, 2037 – March 31, 2038	\$30,202.73
April 1, 2038 – March 31, 2039	\$30,504.76
April 1, 2039 – March 31, 2040	\$30,809.81
April 1, 2040 – March 31, 2041	\$31,117.91
April 1, 2041 – March 31, 2042	\$31,429.09
April 1, 2042 – March 31, 2043	\$31,743.38
April 1, 2043 – March 31, 2044	\$32,060.81
April 1, 2044 – March 31, 2045	\$32,381.42
April 1, 2045 – March 31, 2046	\$32,705.23
April 1, 2046 – March 31, 2047	\$33,032.28
April 1, 2047 – March 31, 2048	\$33,362.60
April 1, 2048 – March 31, 2049	\$33,696.23
April 1, 2049 – March 31, 2050	\$34,033.19
April 1, 2050 – March 31, 2051	\$34,373.52
April 1, 2051 – March 31, 2052	\$34,717.26
April 1, 2052 – March 31, 2053	\$35,064.43
April 1, 2053 - April 30, 2053	\$2,922.04 (partial lease year)