

CITY OF FALCON HEIGHTS
Regular Meeting of the City Council
City Hall
2077 West Larpenteur Avenue
AGENDA
March 27, 2024 at 7:00 P.M.

- A. CALL TO ORDER:
- B. ROLL CALL: GUSTAFSON____ LEEHY__ MEYER ____

WASSENBERG ____ MIELKE____

STAFF PRESENT: LINEHAN____
- C. APPROVAL OF AGENDA
- D. PRESENTATION
- E. APPROVAL OF MINUTES:
 - 1. February 28, 2024 City Council Regular Meeting Minutes
 - 2. March 6, 2024 City Council Workshop Meeting Minutes
- F. PUBLIC HEARINGS:
- G. CONSENT AGENDA:
 - 1. General Disbursements through 03/20/24: \$23,275.39
Payroll through 03/15/24: \$23,024.36
Wire Payments through 03/15/24: \$14,920.63
 - 2. Approval of City License(s)
 - 3. Approval of Jennifer Lowry as Interim City Engineer
- H. POLICY ITEMS:
 - 1. Acceptance of Proposal from Kraus-Anderson as Construction Manager as Advisor of Community Park Renovation and Authorization of Professional Services Agreement
- I. INFORMATION/ ANNOUNCEMENTS:
- J. COMMUNITY FORUM:
Please limit comments to 3 minutes per person. Items brought before the Council will be referred for consideration. Council may ask questions for clarification, but no council action or discussion will be held on these items.
- K. ADJOURNMENT:

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CITY OF FALCON HEIGHTS
Regular Meeting of the City Council
City Hall
2077 West Larpentour Avenue

MINUTES
February 28, 2024 at 7:00 P.M.

A. CALL TO ORDER: 7:01 PM

B. ROLL CALL: GUSTAFSON_X_ LEEHY___ MEYER_X_

WASSENBERG_X_ MIELKE_X_

STAFF PRESENT: LINEHAN_X_

C. APPROVAL OF AGENDA

Councilmember Meyer motions to approve the agenda; approved 4-0

D. PRESENTATION

E. APPROVAL OF MINUTES:

1. January 24, 2024 City Council Regular Meeting Minutes
2. January 24, 2024 City Council Special Workshop Meeting Minutes
3. February 7, 2024 City Council Workshop Meeting Minutes

Councilmember Wassenberg motions to approve the meeting minutes; approved 4-0

F. PUBLIC HEARINGS:

G. CONSENT AGENDA:

1. General Disbursements through 02/23/24: \$305,769.02
Payroll through 02/15/24: \$23,603.48
Wire Payments through 02/15/24: \$15,214.56
2. Approval of City License(s)
3. Conduit Bond Refinance – Series 2013 Ecumen / Pines of Hutchinson
4. Appointment of Adam Keester to the Environment Commission
5. Minnesota GreenCorps Application
6. AARP Community Challenge Grant Application

Councilmember Meyer motions to approve the consent agenda; approved 4-0

Councilmember Wassenberg wonders about the expenditures.

Administrator Linehan comments that \$280,000 is payment for Ramsey County Sheriff's Office for police services for January & February.

Mayor Gustafson welcomes Adam Keester to the Environment Commission and notes he will be a wonderful addition.

Administrator Linehan also comments on the Conduit Bond Refinance – Series 2013. This was a formality requested by bond counsel as they are looking to refinance their bonds; it has no major implications to the City. He also notes the GreenCorps Grant Application is an opportunity for the City to have a member assist with environmental initiatives, while in return providing professional development. The AARP Community Challenge Grant could help the City fund a permanent, movable net at University Grove Park.

H. POLICY ITEMS:

1. Acceptance of Plans and Specifications and Ordering Advertisement for Bids for the 2024 Pavement Management Program, RV 24-04

City Engineer Smith provides Council with a plan overview. The proposed project involves milling the pavement, spot curb replacement, spot utility improvements and asphalt pavement overlay on Roselawn Avenue, from Snelling Avenue to Hamline Avenue. Pavement markings will be refreshed on the new pavement. As part of the assessment process, a public hearing was held on January 10, 2024. Comments were heard and City Council ordered the improvement and preparation of plans and specifications of the proposed project. City Engineer Smith notes items that will be added since the public hearing are an upgrade to the Simpson Street crosswalk and spot sidewalk panel replacement is included as a bid alternate. The next step in the process is to approve plans and specifications and authorize the advertisement for bids.

Mayor Gustafson wonders if any of the cost estimates changed since the last meeting on January 10th and if Roseville Council approved plans yet.

City Engineer Smith answers Roseville Council is expected to accept plans and advertise for bids on Monday, March 4th. The cost estimate came in slightly lower by \$6,000, including the bid alternate, for a total of approximately \$119,000.00.

Councilmember Meyer wonders about the Simpson Street crosswalk upgrades.

City Engineer Smith states there will be a yellow diamond crosswalk sign placed further ahead in addition to current signage to alert drivers of an upcoming crosswalk.

Councilmember Mielke wonders about the soil used in the boulevard plantings.

City Engineer Smith assumes topsoil. She notes City crews maintain the plantings periodically in spring by re-mulching.

Councilmember Meyer motions to approve Resolution 24-17 Approving Plans and Specifications and Ordering Advertisement Bids for the 2024 Pavement Management Project, RV24-04; approved 4-0

I. INFORMATION/ ANNOUNCEMENTS:

Councilmember Mielke attended the Partners in Energy open house on February 21st, organized by the Environment Commission. She notes there was great attendance, presentations and discussions.

Councilmember Meyer adds Falcon Heights is participating with the home energy audits as well as part of Partners in Energy.

Mayor Gustafson provides his condolences to the families of the Burnsville first responders. He attended the Larpentour & Snelling Corridor Study's first focus group meeting on February 26. WSB facilitated great conversation. Next up is a business open house meeting related to the study.

Administrator Linehan notes the Planning Commission held two public hearings at their meeting on February 27. One was to review code language regarding electric vehicle supply equipment and this was recommended unanimously by the Planning Commission to City Council. Second, there was a resident petition from Hollywood Court to change to overnight parking by permit only. After review by the Planning Commission, it was recommended favorably to City Council. City Staff is continuing to take appointments for AARP Tax-Aide. The CEC and Parks & Rec will have a joint meeting on March 18th to start planning for Spring Together. He adds that both St. Anthony Village and Falcon Heights will be launching a survey on Friday, March 1st to gather feedback regarding the potential police partnership. The spring 2024 newsletter and the weekly e-newsletter will have more information on engagement opportunities.

City Engineer Smith notes spring road restrictions that are currently in place per MnDOT.

J. COMMUNITY FORUM:

Please limit comments to 3 minutes per person. Items brought before the Council will be referred for consideration. Council may ask questions for clarification, but no council action or discussion will be held on these items.

K. ADJOURNMENT: 7:26 PM

Councilmember Wassenberg motions to adjourn; approved 4-0

Randall C. Gustafson, Mayor

Dated this 27th day of March, 2024

Jack Linehan, City Administrator

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CITY OF FALCON HEIGHTS

City Council Workshop
City Hall
2077 West Larpenteur Avenue

MINUTES

Wednesday, March 6, 2024
6:30 P.M.

A. CALL TO ORDER: 6:37 PM

B. ROLL CALL: GUSTAFSON_X_ LEEHY_X_
MEYER_X_ MIELKE_X_ WASSENBERG_X_

STAFF PRESENT: LINEHAN_X_ VAN DER WERFF_X_

C. POLICY ITEMS:

1. Potential Police Partnership – Engagement Plan

Administrator Linehan shares preliminary results of the survey with Council. He is pleased with the responses so far. Next, St Anthony has an open house prior to their Council Workshop on Tuesday, March 12 at 5:30 PM. Falcon Heights has their open house prior to their regular Council meeting on Wednesday, March 13 at 6 PM. The Councils of St. Anthony Village, Lauderdale and Falcon Heights are invited to both open houses. Administrator Linehan wonders how engagement with the police should be built into this. St. Anthony Village hired a consultant and Administrator Linehan hopes they will discuss police engagement.

Councilmembers Mielke and Leehy wonder about the format of the open houses.

The Council discusses the logistics of the open house.

Administrator Linehan notes there is no specific structure to the open house. There will be four open houses total plus two town halls in April.

Councilmember Mielke states that councilmembers should act as hosts and welcome attendants.

Councilmember Leehy suggests pairing up councilmembers during the open house.

Councilmember Mielke wonders if it would be beneficial to have conversation starters and use easels around the room.

Mayor Gustafson adds that after one open house, they can re-evaluate.

Council discusses the creation of a handout for the open house with contact information, the survey and information about the potential partnership.

Councilmember Wassenberg wonders how long the survey will stay open.

Administrator Linehan answers the survey will close in April and the two town halls will be after the survey closes in order to present preliminary results. Town halls provide more opportunities for engagement as the public has the opportunity to speak directly to Council and they can respond.

Councilmember Leehy wonders the dates and times for the open houses and town halls.

Council discusses if there should be a facilitator running the town halls to free up time for both mayors and city administrators/managers.

Administrator Linehan sees potential in that. The town halls will mark the end of the public engagement. This will help direct Council towards a decision if they want to continue moving forward with the discussions around the partnership or move in a different direction.

Councilmember Leehy suggests being available for seniors in the community during the time that they are available for door-knocking.

Mayor Gustafson suggests attending one of their coffee hours.

Administrator Linehan agrees and adds that staff can reach out to some of the senior buildings in the city. The idea is to create multiple ways for residents to engage in the discussions. For example, mailing out paper surveys with return envelopes.

Councilmember Wassenberg likes the idea of making it easier for seniors to ask questions by coming to some of the meeting rooms that are available at their buildings.

Administrator Linehan notes the door-knocking should start sooner rather than later as residents need time to take the survey as well. Staff can reach out to property managers of apartment dwellings and senior housing.

Councilmember Leehy adds that a lot of apartment buildings have spots to put up a flyer with information.

Administrator Linehan stresses the goal of the engagement plan is for people to take the survey and to collect data.

Councilmembers Leehy and Wassenberg wonder about engagement with local businesses. They should be invited to the open houses and town halls as well.

Mayor Gustafson adds landlords/property owners.

Administrator Linehan wants to divide up the door-knocking responsibilities. Council then discusses how they want to divide up the neighborhoods and streets for door-knocking and the supplies needed.

Administrator Linehan suggests taking the multifamily buildings out as the Council wants to hold open houses at those locations.

Councilmember Wassenberg wonders about campus housing as they have their own campus police.

Administrator Linehan states that April 5th will be a soft cut-off for the survey; after, Goff Public will start analyzing the data.

2. Community Park Updates

Administrator Linehan explains WSB is in the design phase. Staff interviewed three firms for Construction Managers as Advisor (CMa) that have experience in parks construction in the Twin Cities. Two firms will submit proposals. He explains the City can bring in the CMa to assist in pre-construction cost estimating and construction management. They will work with the architect and WSB on preconstruction and assist with keeping the other parties in check as well. All contracts will be between the City and the trade contractors. The fee was built into the cost estimates for the park. Administrator Linehan explains the other possibility of Construction Managers at Risk (CMAR), but staff recommends the CMa route.

Mayor Gustafson states the CMa has a managerial role in the construction.

Councilmember Leehy wonders about inspections and permit fees.

Staff explains that the City's building inspector will assist with state charges, other fees and inspections.

Administrator Linehan states the fees for all CMAs were similar, so the proposals will be evaluated based on experience. They will also help oversee the bid process. He explains that staff is working on a grant application and this particular grant requires a match from the City and will be used for an inclusive playground. This process has made staff realize how much more engagement is needed around the playground alone, depending on colors and themes.

Councilmember Wassenberg appreciates the idea of having a CMa running day-to-day operations and the bid process.

Administrator Linehan notes the City will pay the contractors directly, but the CMa will help oversee this process as well. He adds that the CMa is also preferred by the City Attorney. He explains a rough timeline of the demo and construction of the building.

Mayor Gustafson wonders about financing and bonding.

Administrator Linehan explains the City will put forward a bond reimbursement resolution. This will provide the City statutory authority to have any cost attributed or refunded towards the bond. Currently, there is enough cash on hand, but long term, a bond will be needed in order to keep capital on hand. The bond process will most likely start in summer, once bid estimates are known.

Councilmember Wassenberg wonders about cost ramp-up.

Administrator Linehan agrees it will ramp up at the end and the City can pay back its capital from the bond. The CMA will handle the RFP processes for the subcontractors. In order to hire the CMA, the City does not have to go through the RFP Process. He explains there was a third option that was explored for the project called Sourcewell, but the City Attorney was not in favor of this process for hiring service providers. It works for buying products such as a new truck.

Mayor Gustafson notes Ice Cream Social can still be held at the Community Park.

Administrator Linehan states staff is cautious with events and field rentals at the park as the timeline is still uncertain.

Councilmember Leehy wonders what the City's Finance Director's thoughts are.

Administrator Linehan notes he is in favor of passing this resolution.

Council is in favor of passing the bond reimbursement resolution at the next City Council meeting.

3. Legislative Updates / Priorities

Administrator Linehan explains the Minnesota State Legislature is in session and has numerous bills for consideration. There are certain bills that the League of Minnesota Cities (LMC) and the City are watching. With the upcoming "City Day on the Hill" organized by LMC, staff has identified areas the Council may want to consider taking official positions on. A key priority is state bonding for the park project. Linehan says he is being realistic and notes that it is unlikely but it's good to have a conversation.

Council agrees.

The second priority is Local Government Aid (LGA). Administrator Linehan explains 2/3rd of our city is exempt from local property tax, so the city relies on LGA. Last year, aid was increased significantly and a portion was transferred to the capital fund, but a large portion was donated to the general fund to cover the large increase in police costs. This funding is key for balancing the levy. The goal is to advocate that the state maintains LGA. Another goal is making restoration and unity days statewide, which was brought forth by Senator Oumou Verbeten. The last set of bills is "Local Control," which includes preemption of decisions that are traditionally at the local level. This year, the state has legislative bills that would encroach on some local control regulations. There are bills that would introduce statewide zoning and land use preemption provisions. For example, limiting parking restrictions for housing and increasing height restrictions. The state sees a lot of current municipal zoning guidelines as unhelpful with the increasing housing demand. Administrator Linehan notes some cities are opposed to these bills and he wants to take a proactive approach. If passed, cities will be required to update their code within a certain timeframe.

Lastly, there is a bill with a proposal to change election timing. This would require municipalities and school districts with odd-year elections to move to even-year elections.

Councilmember Leehy likes that local elections are separate so people can pay attention to local elections as well as state/federal elections.

Administrator Linehan adds it would reduce our costs as the City contracts with Ramsey County for election administration. Council Member Mielke states there has not been a lot of traction with the bill. Linehan adds that he will be lobbying at the City Day on the Hill organized by LMC.

Council discusses the City's stands on the legislative priorities.

Administrator Linehan notes that he is hopeful that the City's bonding requests will be kept in the mix with the bonding requests for the Governor's recommendation.

4. 75th Anniversary Planning

Administrator Linehan wonders what direction Council wants to take for the 75th anniversary. He learned there was a parade down Garden Ave. for the 50th anniversary of the City and the official celebration was held at the end of summer. April 1st is the official date for the incorporation of Falcon Heights.

Councilmember Leehy notes they could do a tour again with Falcon Heights facts.

Mayor Gustafson talks about some of the old photos that are available and they bring up good memories.

Councilmember Mielke suggests an open house with old photos and a presentation of Falcon Heights' history.

Councilmember Leehy explains she is fascinated with generational stories of families staying or returning to Falcon Heights.

Councilmember Wassenberg suggests having a 75-year history booth at the Ice Cream Social with photos and some history.

Councilmember Leehy states having the incorporation date be recognized is good, but the celebration can be held at the Ice Cream Social.

Councilmember Mielke likes having an open house to which all old councilmembers and mayors can be invited. The anniversary could also be acknowledged at Spring Together.

Councilmember Leehy likes acknowledging it on April 1st and noting it at the Spring Together.

Councilmember Wassenberg likes having banners acknowledging the anniversary on the new street lights.

Administrator Linehan notes the goal is to have the 75th anniversary celebration be resident-driven by creating an ad-hoc committee.

5. Future Agenda Items

Administrator Linehan provides the opportunity to the Council to suggest future agenda items. He notes that the assessment policy was brought up previously.

Councilmember Wassenberg agrees it would be beneficial to take another look at the policy.

Administrator Linehan states the Falcon Woods project includes the Northome east and west-bound streets as well and the city is considering including the alleyways. Other alleyways were done as part of previous PMP projects and the cost came out significantly lower than anticipated.

Councilmember Mielke suggests cleaning up some of the old ordinances and routinely reviewing them to ensure they stay up to date. She also wonders about snow plowing the alleyways.

Administrator Linehan explains the Planning Commission is going through the land use ordinances and staff routinely reviews City Code. He states that Lauderdale was added and more sidewalks are being plowed by Public Works as they are fully staffed now. They are reviewing the possibility of alleyway snow plowing, but have to determine capacity of Public Works staff.

Councilmember Leehy appreciates that this is being reviewed by staff as it is impactful for residents.

Councilmember Wassenberg agrees, but notes that there are a number of pros and cons that need to be reviewed before the City can offer that service.

Administrator Linehan suggests reviewing the possibility of having a single trash hauler. He believes the city could get a lower cost contract than residents could with the current offerings of multiple trash haulers.

Councilmember Wassenberg believes it is beneficial to have multiple trash haulers to create some competition. He adds having a single hauler could disenfranchise smaller haulers as they cannot compete with larger haulers.

Councilmember Leehy wonders if Falcon Heights ever had a single hauler.

Mayor Gustafson answers no, it was attempted, but never successful.

Administrator Linehan explains that the haulers have to be licensed with the city and during their renewal they provide pricing. But, those fees exclude additional fees such as fuel surcharges. Lastly, he wonders about a date for the Council retreat. He wants to bring Third Sphere back for a DEI recap training. A tentative date they are considering is April 27th. It would be good to talk about next steps then for the police partnerships as all engagement opportunities have wrapped up then.

D. ADJOURNMENT: 9:29 PM

DISCLAIMER: City Council Workshops are held monthly as an opportunity for Council Members to discuss policy topics in greater detail prior to a formal meeting where a public hearing may be held and/or action may be taken. Members of the public that would like to make a comment or ask questions about an item on the agenda for an upcoming workshop should send them to mail@falconheights.org prior to the meeting. Alternatively, time is regularly allotted for public comment during Regular City Council Meetings (typically 2nd and 4th Wednesdays) during the Community Forum.

Dated this 27th day of March, 2024

Randall C. Gustafson, Mayor

Jack Linehan, City Administrator

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PACKET: 03056 MAR 12 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

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I-315		LEGAL	2,459.60			
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		JAN GENERAL MATTERS		101 4114-80200-000	LEGAL FEES	1,694.20
		JAN SANITARY AGREE/ROSEVILLE		601 4601-80200-000	LEGAL	213.60
		MOLNUA LEGAL MATTERS		426 4426-81900-000	PROFESSIONAL/ATTORNEY SV	551.80
I-316		FEB GENERAL MATTERS	1,535.60			
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01-03110	CENTURY	LINK				
I-202403128782		MARCH LANDLINES SS	74.83			
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		MARCH LANDLINES SS		601 4601-85011-000	TELEPHONE - LANDLINE	74.83
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01-030	GOFF	PUBLIC				
I-19350		PUBLIC RELATIONS CNSULTING FE	5,568.40			
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		PUBLIC RELATIONS CNSULTING FEB		101 4112-80330-000	CONSULTANT	5,568.40
		=== VENDOR TOTALS ===	5,568.40			
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01-05928	JOHNSON	LITHO GRAPHICS OF EAU				
I-109672		SPRING NEWSLETTER	2,587.03			
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		SPRING NEWSLETTER		101 4116-70420-000	NEWSLETTERS/INFORMATION	1,995.00
		SPRING NEWSLETTER		101 4116-70500-000	POSTAGE	592.03
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01-05509	LEAGUE	OF MN CITIES				
I-401043		2024 CITY DAY ON HILL CONF	125.00			
3/12/2024	APBNK	DUE: 3/12/2024 DISC: 3/12/2024		1099: N		
		2024 CITY DAY ON HILL CONF		101 4112-86100-000	CONFERENCES/EDUCATION/AS	125.00
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PACKET: 03056 MAR 12 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

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I-V 4-2023	Mar	LTD AND STD INS	380.31				
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		LTD AND STD INS		101 4112-89000-000	MISCELLANEOUS	380.31	
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01-05908		METRO-INET					
I-1781		MARCH IT	4,132.00				
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		MARCH IT		101 4116-85070-000	TECHNICAL SUPPORT	4,132.00	
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01-05970		NORTHSTAR DESIGNS					
I-712-1		TRUCK DECALS	80.00				
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		TRUCK DECALS		101 4132-70120-000	SUPPLIES	80.00	
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01-0624		OCCUPATIONAL HEALTH CENTERS OF					
I-103944234		DRUG TESTING SIMONS	86.00				
3/12/2024	APBNK	DUE: 3/12/2024 DISC: 3/12/2024		1099: N			
		DRUG TESTING SIMONS		101 4132-89000-000	MISCELLANEOUS	86.00	
=== VENDOR TOTALS ===			86.00				
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01-06581		TRI-STATE BOBCAT INC					
I-a32234		PARTS: ASPHALT STREET ROLLER	38.49				
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		PARTS: ASPHALT STREET ROLLER		101 4132-87000-000	REPAIR EQUIPMENT	38.49	
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01-07898		WSB					
I-r-024278-000-1		LARPENTEUR ST LIGHT REPLACMT	880.00				
3/12/2024	APBNK	DUE: 3/12/2024 DISC: 3/12/2024		1099: N			
		LARPENTEUR ST LIGHT REPLACMT		419 4419-92500-000	LARPENTEUR STREET LIGHTS	880.00	
=== VENDOR TOTALS ===			880.00				
=== PACKET TOTALS ===			17,947.26				

3/18/2024 10:01 AM
 PACKET: 03058 March 18 Payables
 VENDOR SET: 01 City of Falcon Heights
 SEQUENCE : ALPHABETIC
 DUE TO/FROM ACCOUNTS SUPPRESSED

A/P Regular Open Item Register

PAGE: 1

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		Landline Svc March			101 4141-85011-000	TELEPHONE - LANDLINE	64.68
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01-03123	CINTAS CORPORATION						
I-4184910091		Floor Mats Svc 2/29/24		82.28			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024			1099: N		
		Floor Mats Svc 2/29/24			101 4131-87010-000	CITY HALL MAINTENANCE	82.28
I-4186352457		Floor Mats Svc 3/14/24		82.28			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024			1099: N		
		Floor Mats Svc 3/14/24			101 4131-87010-000	CITY HALL MAINTENANCE	82.28
== VENDOR TOTALS ==				164.56			
01-03583	DELL MARKETING L.P.						
I-10736981383		OptiPlex Micro - Computer		808.85			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024			1099: N		
		OptiPlex Micro - Computer			401 4401-90100-000	FURNITURE & EQUIPMENT	808.85
== VENDOR TOTALS ==				808.85			
01-05166	GRAINGER, W. W., INC.						
I-9037975829		Supplies		131.29			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024			1099: N		
		Shop Supplies			101 4131-70110-000	SUPPLIES	20.90
		Shrub Clump Grubber			101 4141-70100-000	SUPPLIES	110.39
I-9037975837		Supplies		109.48			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024			1099: N		
		Brush Grubber			101 4141-70100-000	SUPPLIES	99.35
		Socket			101 4131-70110-000	SUPPLIES	10.13
I-9037975845		Socket		8.53			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024			1099: N		
		Socket			101 4131-70110-000	SUPPLIES	8.53
== VENDOR TOTALS ==				249.30			

3/18/2024 10:01 AM
 PACKET: 03058 March 18 Payables
 VENDOR SET: 01 City of Falcon Heights
 SEQUENCE : ALPHABETIC
 DUE TO/FROM ACCOUNTS SUPPRESSED

A/P Regular Open Item Register

PAGE: 2

-----ID-----			GROSS	P.O. #		
POST DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
356	LINEHAN, JACK					
I-202403188784		Flex Reimbursement	27.04			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024		1099: N		
		Flex Reimbursement		101 21712-000	MEDICAL FLEX SAVINGS PAY	23.80
		Flex Reimbursement		206 21712-000	MEDICAL FLEX SAVINGS PAY	1.35
		Flex Reimbursement		601 21712-000	MEDICAL FLEX SAVINGS PAY	1.08
		Flex Reimbursement		602 21712-000	MEDICAL FLEX SAVINGS PAY	0.81
I-202403188785		Telephone Reimbursement March	60.00			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024		1099: N		
		Telephone Reimbursement March		601 4601-85015-000	CELL PHONE	60.00
=== VENDOR TOTALS ===			87.04			
01-06030	OLSON,ROLAND					
I-202403188786		Flex Payment	34.00			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024		1099: N		
		Flex Payment		101 21712-000	MEDICAL FLEX SAVINGS PAY	28.22
		Flex Payment		601 21712-000	MEDICAL FLEX SAVINGS PAY	5.10
		Flex Payment		602 21712-000	MEDICAL FLEX SAVINGS PAY	0.68
=== VENDOR TOTALS ===			34.00			
01-06053	OREILLY AUTO PARTS					
I-3243-418748		Battery for Wacker Roller	67.92			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024		1099: N		
		Battery for Wacker Roller		101 4132-70120-000	SUPPLIES	67.92
I-3243-420936		Shop Supplies	7.99			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024		1099: N		
		Shop Supplies		101 4131-70110-000	SUPPLIES	7.99
=== VENDOR TOTALS ===			75.91			
01-06112	PIONEER PRESS					
I-224572540		Legals	97.24			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024		1099: N		
		Legals		101 4111-70410-000	LEGAL NOTICES	97.24
=== VENDOR TOTALS ===			97.24			

PACKET: 03058 March 18 Payables
 VENDOR SET: 01 City of Falcon Heights
 SEQUENCE : ALPHABETIC
 DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----				GROSS	P.O. #		
POST DATE	BANK CODE	-----DESCRIPTION-----		DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
370	XCEL ENERGY						
I-202403188787		Elect		2,711.85			
3/18/2024	APBNK	DUE: 3/18/2024 DISC: 3/18/2024			1099: N		
		Elect			101 4131-85020-000	ELECTRIC	687.38
		Elect			101 4141-85020-000	ELECTRIC/GAS	24.38
		Elect			209 4209-85020-000	STREET LIGHTING POWER	1,869.10
		Elect			209 4209-85020-000	STREET LIGHTING POWER	4.75
		Elect			209 4209-85020-000	STREET LIGHTING POWER	43.70
		Elect			209 4209-85020-000	STREET LIGHTING POWER	16.31
		Elect			209 4209-85020-000	STREET LIGHTING POWER	2.88
		Elect			209 4209-85020-000	STREET LIGHTING POWER	63.35
		== VENDOR TOTALS ==		2,711.85			
		== PACKET TOTALS ==		4,293.43			

PACKET: 03060 MAR 20 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----		GROSS		P.O. #			
POST DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION	
=====							
01-05008 HUMANA INSURANCE CO							
I-673999246		VISION APRIL	78.21				
3/20/2024	APBNK	DUE: 3/20/2024 DISC: 3/20/2024		1099: N			
		VISION APRIL		101 4112-89000-000	MISCELLANEOUS	78.21	
=== VENDOR TOTALS ===			78.21				
=====							
01-05856 LINEHAN, JACK							
I-202403208788		FLEX REIMB	579.25				
3/20/2024	APBNK	DUE: 3/20/2024 DISC: 3/20/2024		1099: N			
		FLEX REIMB		101 21712-000	MEDICAL FLEX SAVINGS PAY	509.74	
		FLEX REIMB		206 21712-000	MEDICAL FLEX SAVINGS PAY	28.96	
		FLEX REIMB		601 21712-000	MEDICAL FLEX SAVINGS PAY	23.17	
		FLEX REIMB		602 21712-000	MEDICAL FLEX SAVINGS PAY	17.38	
=== VENDOR TOTALS ===			579.25				
=====							
01-05843 MN NCPERS LIFE INSURANCE							
I-458800042024		LIFE INS APRIL	64.00				
3/20/2024	APBNK	DUE: 3/20/2024 DISC: 3/20/2024		1099: N			
		LIFE INS APRIL		101 21709-000	OTHER PAYABLE	39.52	
		LIFE INS APRIL		204 21709-000	OTHER PAYABLE	1.60	
		LIFE INS APRIL		601 21709-000	OTHER PAYABLE	16.16	
		LIFE INS APRIL		602 21709-000	OTHER PAYABLE	6.72	
=== VENDOR TOTALS ===			64.00				
=====							
01-05925 SECURIAN LIFE INSURANCE COMPAN							
I-34885351-00		APRIL LIFE INS	313.24				
3/20/2024	APBNK	DUE: 3/20/2024 DISC: 3/20/2024		1099: N			
		APRIL LIFE INS		101 4112-89000-000	MISCELLANEOUS	313.24	
=== VENDOR TOTALS ===			313.24				
=== PACKET TOTALS ===			1,034.70				

***** DIRECT DEPOSIT LIST *****

PAY PERIOD ENDING

3/15/2024

DIRECT DEPOSIT EFFECTIVE DATE

3/12/2024

EMP #	NAME	AMOUNT
0 1006	JACK LINEHAN	3,057.73
01-1027	KELLY A NELSON	2,551.72
01-1029	ELKE VAN DER WERFF	1,779.05
01-1136	ROLAND O OLSON	3,282.06
01-1162	ALYSSA LANDBERG	1,245.33
01-1028	HANNAH B LYNCH	2,794.05
01-1167	DAVID S SIMONS	1,716.13
01-1168	DEAN T POPE	1,725.88
01-1033	DAVE TRETSVEN	2,065.72
01-1143	COLIN B CALLAHAN	2,806.69

TOTAL PRINTED: 10 23,024.36

3-12-2024 6:32 AM

PAYROLL CHECK REGISTER

PAGE: 1

PAYROLL NO: 01 City of Falcon Heights

PAYROLL DATE: 3/12/2024

*** REGISTER TOTALS ***

REGULAR CHECKS:		
DIRECT DEPOSIT REGULAR CHECKS:	10	23,024.36
MANUAL CHECKS:		
PRINTED MANUAL CHECKS:		
DIRECT DEPOSIT MANUAL CHECKS:		
VOIDED CHECKS:		
NON CHECKS:		

TOTAL CHECKS:	10	23,024.36

*** NO ERRORS FOUND ***

** END OF REPORT **

March 15 payroll

Fed With	8,480.46
St With	1,469.29
Pera	4,770.88
ICMA	200.00

14,920.63

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Meeting Date	March 27, 2024
Agenda Item	Consent G2
Attachment	N/A
Submitted By	Kelly Nelson Administrative Services Director / Deputy Clerk

Item	Approval of City License(s)
Description	The following individuals/entities have applied for a <u>Multifamily Rental Dwelling License</u> for 2024. Staff have received the necessary documents for licensure. 1. CAPREIT Management; 1530 Larpenteur Ave. W. 2. CAPREIT Management; 1550 Larpenteur Ave. W. 3. 1707 Tatum LLC; 1707 Tatum Street
	N/A
Attachment(s)	N/A
Action(s) Requested	Staff recommends approval of the City license applications contingent on background checks and fire inspections as required.

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Meeting Date	March 27, 2024
Agenda Item	Consent G3
Attachment	N/A
Submitted By	Jack Linehan, City Administrator

Item	Appointment of Interim City Engineer Jennifer Lowry
Description	For several years the City has contracted with the City of Roseville for engineering services. The City's current City Engineer, Stephanie Smith, has taken a job with another city and will be leaving her role as the Assistant City Engineer for the City of Roseville. Jennifer Lowry, Roseville's current Assistant Public Works Director / City Engineer will step up as the City of Falcon Heights' Interim City Engineer. The City wishes to continue utilizing the City of Roseville's Engineering Department with Jennifer Lowry as Interim Engineer for 2024.
Budget Impact	Funds have been allocated in the 2024 Budget.
Attachment(s)	N/A
Action(s) Requested	Staff recommends the approval of Jennifer Lowry and the City of Roseville Engineering Department as City of Falcon Heights' Interim Engineer for 2024.

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Meeting Date	March 27, 2024
Agenda Item	H1
Attachment	Kraus-Anderson Proposal for Construction Management Services; Professional Services Agreement (TBD); Resolution
Submitted By	Jack Linehan, City Administrator

Item	Kraus-Anderson Proposal for Construction Management Services – Community Park Renovation Project
Description	As we enter the pre-construction and construction phases of the Community Park Renovation Project, the City and our consultants have identified the benefit of bringing on a Construction Manager as Advisor (CMA). This is a professional service that will assist the City with accurate cost estimating in the planning phase, and will help bid the projects to prime contractors (HVAC, masonry, electric, demolition, etc.) that will be packaged to the City Council. Upon construction of the project, the CMA will be the primary oversee of day-to-day construction. They will dedicate an on-site supervisor who will be in charge of all contractors and provide regular feedback to the City and Council. City Staff interviewed three major firms, and asked two firms to submit proposals for service. The two firms were Loeffler Construction and Kraus-Anderson. Both firms had extensive work with municipalities on similar park projects. Staff have deemed both firms as qualified. Costs for the two firms was similar: Kraus-Anderson proposed the lower construction management fee (2.25% of project cost vs. 3.5% from Loeffler), but Loeffler had lower hourly rates for positions. The bulk of the project costs will come from these hourly costs. The final determination of the firm selection was based on the proposed project team’s relevant experience on similar projects. Ultimately, staff felt that the Kraus-Anderson team had a more extensive track record on similar projects. We feel confident that their approach to building and overseeing park projects will ensure the delivery of a park that is on-schedule and on-budget.
Budget Impact	Hiring Kraus Anderson is built in to the project contingency in our cost estimates for contingencies, which were at 30% of the cost estimating. The proposed costs vary on how the final scope of the project is, but \$377,792 was proposed as the total cost. The fees are budgeted for in our capital plan.
Attachment(s)	• Kraus Anderson Proposal for Construction Management Services • Professional Services Agreement (to be added before approval – agreement is being drafted). • Resolution 24-23

Action(s) Requested	Staff recommends that the Falcon Heights City Council authorize the City Administrator to execute all necessary documents hire Kraus-Anderson to provide construction management as advisor (CMA) services in overseeing the construction administration of a new park building and site improvements at Community Park.
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CITY OF FALCON HEIGHTS

Community Park Project

March 15, 2024



KRAUS-ANDERSON®

Building enduring relationships and strong communities

March 15, 2024

Jack Linehan, City Administrator
City of Falcon Heights
2077 West Larpentour Avenue
Falcon Heights, MN 55113

Dear Mr. Linehan:

Thank you for the opportunity to submit a response for the Falcon Heights Community Park project. With our steadfast commitment to construction excellence, detailed and continuous cost estimating, value management practices, transparent communication, and collaborative team dynamics, we would be thrilled to be the City of Falcon Heights' Construction Management partner.

Additionally, we would like to draw your attention to a few highlights throughout our RFQ response that we believe best positions KA to be your Construction Manager:

- **Attention to Details:** Our meticulous attention to detail, fortified by extensive experience in cost estimating, results in projects that remain within budget and schedule. See pages 11-16 for an example of our budgets and estimates processes.
- **Full-Time Superintendent:** Recognizing the necessity of dedicated resources for seamless project execution, we provide a full-time superintendent to furnish on-site leadership and oversight, ensuring adherence to project timelines and safety.
- **Communication:** Effective communication lies at the heart of project success, particularly in community-centric endeavors. We are dedicated to maintaining transparent communication with all stakeholders, leveraging channels like regular progress updates, a dedicated community website, and a digital KA Client Portal.

We prioritize cultivating strong relationships with clients, subcontractors, and stakeholders alike. Our team is enthusiastic about integrating into the Falcon Heights community and engaging with residents and staff throughout the construction of this pivotal community park project. Please reach out for more information or to further discuss our proposal.

Sincerely,

KRAUS-ANDERSON® CONSTRUCTION COMPANY



Dustin Phillips, Construction Executive | Project Director
612-419-9563 | dustin.phillips@krausanderson.com

Firm History + Information



Established in 1897, KA is a family-owned, privately held corporation and has provided construction management and general construction services for more than 127 years. Consistently ranked as one of the top 25 construction management firms in the Midwest by *Engineering News-Record*, KA provides integrated project management services for the successful execution of all types of construction projects. With a bonding capacity of \$1.2 billion, KA ranks nationally in the top tier of financially strong companies. KA serves a diversified commercial construction market, with a 2023 managed construction volume of \$1.4 billion.

Headquartered in Minneapolis with offices in Bemidji, Duluth, Rochester, MN; Bismarck, and Fargo ND; Madison, and Milwaukee, WI, and Phoenix, AZ, KA can leverage the depth of resources and talent of 590 personnel company-wide.

Preconstruction Phase Services Experience

Kraus-Anderson will seek to cultivate a positive working relationship with all project team members and provide the best value for your project. The most successful construction projects start with collaborative planning and communication well before breaking ground. We actively engage with the project team to understand your project needs, goals, and processes. This allows KA to customize our approach to planning, organizing, and completing the project and ensures that we meet or exceed all needs and expectations.

SCHEDULE

The master schedule encompasses preconstruction, construction, and post-construction phases and is designed to include critical milestones and sufficient detail for a concise project timeline overview. This schedule also accounts for City of Falcon Heights' activities such as FF&E coordination, technology integration, and move-in sequences, recognizing that interconnected phases may be impacted by other delays. Clear schedule transparency aids in communicating the ripple effects of decisions throughout the project team.

We will actively seek opportunities to enhance schedule, budget, and quality during project schedule development. This may involve strategies like mitigating cold weather effects, optimizing landscaping growth, ensuring the availability of asphalt plants, and carefully orchestrating the delivery of vital long-lead materials.



IDENTIFY AND RECOMMEND PROCUREMENT OF LONG-LEAD ITEMS

Proactively managing long-lead items is crucial to mitigate potential schedule risks. Collaborating with the City of Falcon Heights, project stakeholders, and essential trade partners, we will strategically source and procure these materials to ensure the project remains on schedule. Recognizing the necessity for early equipment procurement during the design phase, we are committed to facilitating a seamless process.

1. Management

VALUE MANAGEMENT + VALUE ENGINEERING

Our experienced team can provide you with the right data to make informed decisions about key pieces of your project. This allows you to maximize the use of your budget and ensure your facility operates as it is intended.

Pivotal to controlling costs is maximizing the value of each system in a building. Our team employs concurrent design, estimating, and document review processes. This allows the team to develop a better understanding of the program and intent of the designers and to offer solutions to align your program, budget requirements, and construction approach with actual costs in the marketplace. Critical areas are identified where further clarification and detail are required. **We provide up-front recommendations regarding the phasing of the work, installation issues, long-term performance, and value engineering options.**

CONSTRUCTABILITY REVIEWS

Kraus-Anderson's constructability review leverages our expertise and past experiences to assess design documents. This process enhances document clarity, reducing costs and promoting consistency on bid day, and serves the following objectives:

- Identify and resolve conflicts within the documents.
- Detect and eliminate change orders (COs) and requests for information (RFIs).
- Minimize project delays.
- Facilitate a smoother construction process.
- Enhance project scheduling.

PREPARATION OF WORK SCOPES PROPOSED FOR THE CONSTRUCTION OF EACH PROJECT PHASE

The meticulous preparation of work scopes for each project phase is critical for the smooth execution of construction projects. By carefully segmenting the work scopes, we streamline the bidding process, facilitate better contractor coordination, and encourage local participation, resulting in efficient project management and enhanced clarity.

As the project's design evolves, we will:

- Formulate our strategy for bidding and executing your project.
- Collaborate closely with the project team to determine the appropriate number of work scopes.
- Structure bid packages to accommodate multiple competitive bids.

These bid packages will encompass project-specific construction requirements related to logistics, scheduling, safety, and coordination. They will also feature comprehensive individual work scope descriptions encompassing all specified design sections. Making this information readily available to potential bidders will give them a clearer understanding of the work's scope, driving accurate pricing. This approach minimizes gaps in the work scope, resulting in fewer change orders.



Pre-Bid Meetings

During the bidding phase, we schedule pre-bid meetings to disseminate general project information and acquaint potential contractors with the project's scope.

1. Management

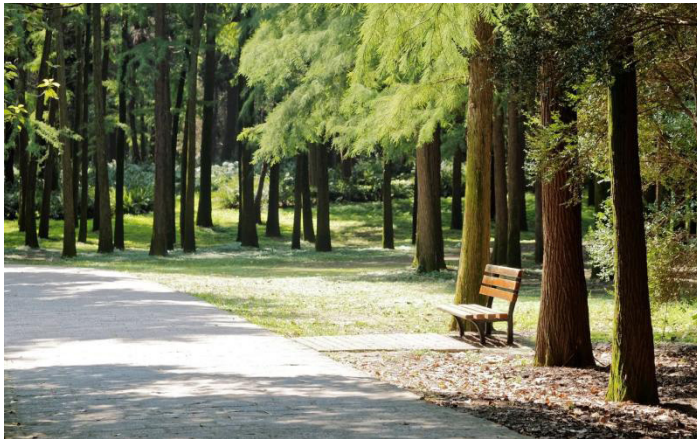
PROMOTING LOCAL CONTRACTOR ENGAGEMENT

Our approach is to customize project work scopes to cater to the needs and capabilities of local contractors. We develop strong interest by leveraging established relationships with local trades and suppliers to deliver maximum value to the City of Falcon Heights.

BID OPENING

Upon bid opening, KA will present a bid comparison to assess how the bids align with the project budget. Subsequently, our project management team will thoroughly review the lowest responsible bidders to validate the scope and submit a recommendation for the project award to the City of Falcon Heights.

KRAUS-ANDERSON + MINNESOTA RECREATION + PARK FOUNDATION SCHOLARSHIP



The Minnesota Recreation and Park Foundation has spent the last 50 years supporting the parks and recreation profession in Minnesota. One of the ways that it is done, is by creating scholarships for those that are pursuing a degree in parks and recreation! (Special thank you to Dustin Phillips and Kraus-Anderson for continuing to sponsor this valuable program!)

*~ Jennifer Fink, Director of Parks + Recreation
City of New Brighton*



1. Management

SPECIAL SERVICES + BENEFITS

KA utilizes the latest software and hardware technology for estimating, constructability analysis, and project management. This project team is well-versed in these technologies and processes along with how to effectively implement them for you. We utilize these tools to make your life easier and to reassure you that our team is looking out for your best interests. The following resources illustrate why we are the preferred construction manager for many cities and counties:

BUILDING SCIENCE / MECHANICAL + ELECTRICAL SYSTEMS REVIEW

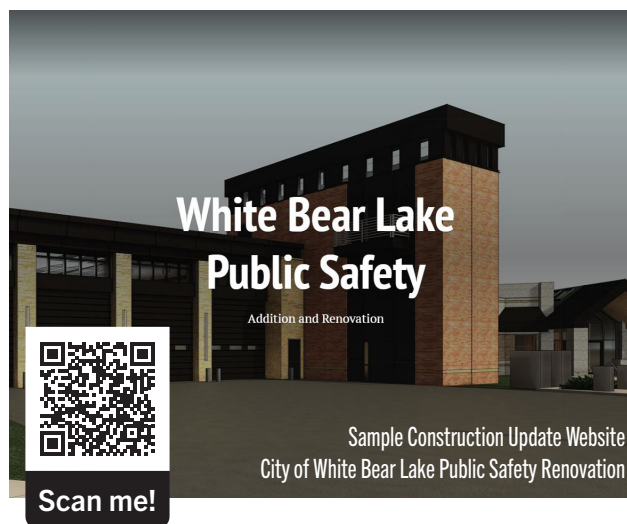
We utilize in-house expertise to aid in quality and constructability reviews throughout design. Our specialized team members assist in driving value engineering into the project to make sure that the City of Falcon Heights gets the best quality at the best cost. Consisting of licensed architects and engineers with decades of experience in design, enclosure consultation, forensic evaluation, building commissioning, and quality control, our in-house team provides assistance and advice for the design and ownership teams, helping projects stay within budget and ensuring the overall quality of the finished project. With a track record of success on numerous large-scale and complex projects, they have prioritized “getting it right the first time.”



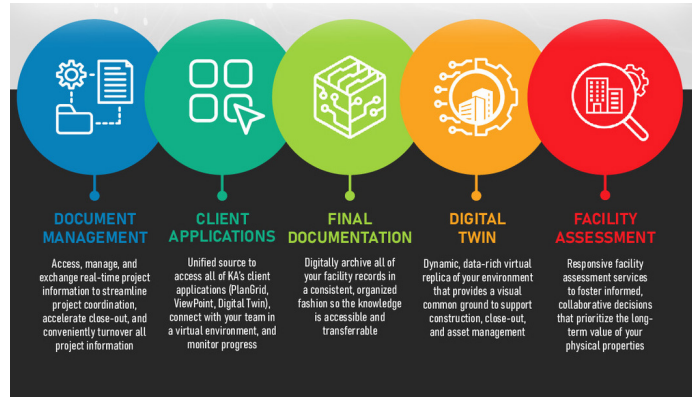
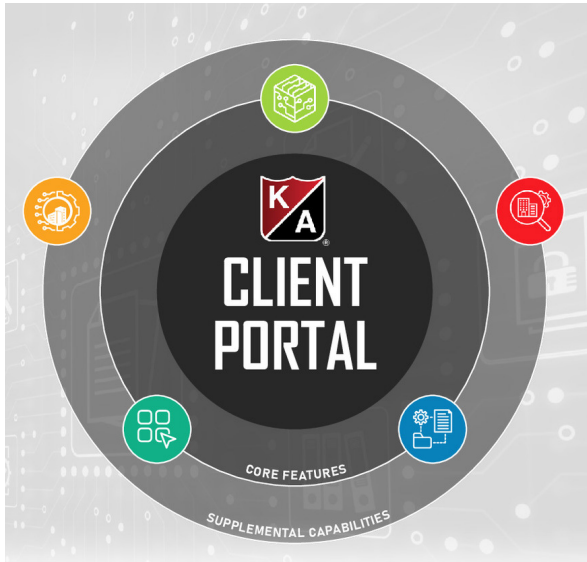
COMMUNICATION PROCESS + TOOLS

Kraus-Anderson will facilitate an interactive, transparent, and collaborative preconstruction process involving all stakeholders. This process begins by grasping the project scope and expectations and defining project parameters. As planning progresses, KA will emphasize honest feedback, active listening, budget adherence, strict scheduling, and securing buy-in for successful project execution. We'll focus on coordinating and channeling information that works for you, including:

- Community Engagement: Tailoring outward messaging to your community
- Stakeholder Engagement: Tailoring inward messaging to organizational groups or individuals
- Team Engagement: Sharing information among the City of Falcon Heights, the Design Team, and CM



1. Management



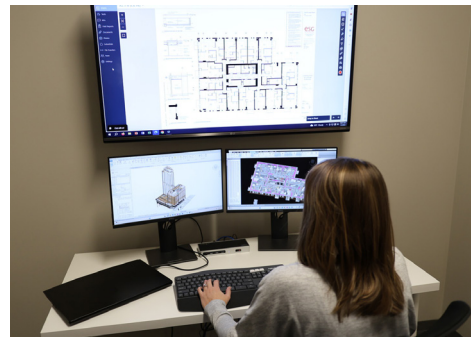
The KA Client Portal is a single, collaborative destination for Kraus-Anderson and its clients to conveniently access relevant client applications and securely store and exchange project information before, during, and long after project delivery.

BIM / VDC

Finding and solving problems before they begin, our Building Information Modeling (BIM) and Virtual Design and Construction (VDC) team can perform clash detection of major building components to solve problems before they ever reach the field, saving you time and money. This is an integral part of our phasing and site logistics to bolster our communication abilities.

AUTODESK BUILD

Autodesk Build is considered one of the best communication tools in the industry. It allows for real-time communication so that all members of the project team are working off the same documents. It houses all key, up-to-date project information, including plans, specifications, shop drawings, product information, Requests for Information (RFI), Potential Change Orders (PCO), Change Orders (CO), punch lists, observation reports, daily project logs, progress photos, and other project-specific items.



2. Similar Experience



City of Cottage Grove Glacial Valley Park Building

The new park building contains 4,200 SF of space for community/class/meeting rooms, a kitchen, a storage area, and a public warming room. With the goal of carbon-neutral energy usage utilizing a combination of solar and geothermal heating and cooling, the project presented many challenges in design, planning, and implementation.

PROJECT: Glacial Valley Park Building

DELIVERY METHOD: CMaR

COMPLETION DATE: November 2023

COST DETAILS: \$3,620,028

OWNER'S NAME + ADDRESS

City of Cottage Grove

12800 Ravine Pkwy. S

Cottage Grove, MN 55016

OWNER'S REPRESENTATIVE

Zac Dockter, Parks + Recreation Director

651-458-2808



City of New Brighton Hansen Park West

This project includes consolidation of parking into one parking lot, reorientation and enhancements to the two ballfields, the inclusion of a multi-purpose field overlay, the addition of a picnic shelter with restrooms near the ballfields and disc golf course, realigned trails, and stormwater enhancements. It will also include a tennis court replacement on the park's west side.

PROJECT: Hansen Park West

DELIVERY METHOD: CMa

COMPLETION DATE: Summer 2024

BUDGET: \$4,500,000

SIZE: 3,616 SF

OWNER'S NAME + ADDRESS

City of New Brighton

803 Old Highway 8 NW

New Brighton, MN 55112

OWNER'S REPRESENTATIVE

Jennifer Fink, Director of Parks + Recreation

651-638-2126

2. Similar Experience



City of New Brighton Totem Pole Park

Redevelopment of existing park that included new sports courts, baseball field, and pavilion.

PROJECT: Totem Pole Park
DELIVERY METHOD: CMa
COMPLETION DATE: November 2023
COST DETAILS: \$2,342,410
SIZE: 750 SF
OWNER'S NAME + ADDRESS
City of New Brighton
803 Old Highway 8 NW, New Brighton, MN 55112
OWNER'S REPRESENTATIVE
Jennifer Fink, Director of Parks + Recreation
651-638-2126



City of Fridley Moore Lake Park

This project included a 4,000 SF new park pavilion with a 4,000 SF canopy overhang and renovation of the parking lot, basketball and tennis courts, and walking trails.

PROJECT: Moore Lake Park
DELIVERY METHOD: CMa
COMPLETION DATE: November 2023
COST DETAILS: \$5,808,832
OWNER'S NAME + ADDRESS
City of Fridley
7071 University Avenue NE, Fridley, MN 55432
OWNER'S REPRESENTATIVE
Nic Schmidt, Civil Engineer
763-572-3556



SandVenture Aquatic Park Renovation

SandVenture's facility needed renovations, including the pool liner, plumbing, curb walls, sand, and buildings, and new locker rooms and a restaurant shell space. In addition to replacing the sand-bottom pool, the aquatics area will include a new climbing wall, diving platform, and boardwalk.

PROJECT: SandVenture Aquatic Park Renovation
DELIVERY METHOD: CMa
COMPLETION DATE: Summer 2024
BUDGET: \$6,600,000
SIZE: 9,000 SF
OWNER'S NAME + ADDRESS
City of Shakopee
485 Gorman Street, Shakopee, MN 55379
OWNER'S REPRESENTATIVE
Michael Kerski, Director of Planning + Development
952-233-9346

3. Key Project Personnel



KEN FRANCOIS
SENIOR PROJECT
MANAGER

Ken will manage the project from preconstruction through construction completion. He will provide management oversight of

all project elements, including budget and schedule control and overall project communication.

EDUCATION

BS, Civil Engineering, University of Wisconsin, Platteville, WI

PROFESSIONAL ASSOCIATIONS

- American Public Works Association - MN Chapter
- American Society of Civil Engineers
- Minnesota Construction Association
- ACE Mentor Program - Lead Mentor

INDUSTRY EXPERIENCE 21 years

RELEVANT PROJECT EXPERIENCE

- **City of Stillwater - St. Croix Valley Recreation Center Renovation**
159,909 SF interior renovation of two hockey rinks, dome, and turf field enlargement
- **City of Wadena - Maslowski Wellness and Research Center**
52,500 SF, two-story new wellness center consisting of a court gymnasium, indoor swimming pool, therapy pool, fitness center, racquetball courts, and community meeting spaces
- **Dunn County Community Services Building Renovation**
45,000 SF renovation, including demolition of the second level, and one wing of the main level, build back of interior walls, new flooring, new ceilings, new casework, lighting, and mechanical



BEN ALBRECHT
ASSISTANT
PROJECT MANAGER

Ben will assist Ken and Mathias in managing the project from preconstruction through construction completion. He will manage

all project elements, including budget and schedule control and overall project communication. Ben will also provide the front-end bidding documents and generate local bidder interest in the project.

EDUCATION

BA, Engineering + Physics, Minor in Math, Augustana University, Sioux Falls, SD

BS, Civil Engineering, U of M, Minneapolis, MN

PROFESSIONAL ASSOCIATIONS

- American Society of Civil Engineers
- Minnesota Geotechnical Society

INDUSTRY EXPERIENCE 9 years

RELEVANT PROJECT EXPERIENCE

- **City of Cottage Grove Glacial Valley Park Building**
6,000 GSF new multi-use park building with training/gathering spaces, kitchen, NanaWall exterior, and new courtyard
- **City of New Brighton Sunny Square Park**
New park shelter/pavilion, trail system, parking, playground with workout features, and renovated ballfields with new fencing and dugouts
- **City of New Brighton Totem Pole Park**
New park shelter/pavilion, trails, ballfield, basketball court, pickleball courts, parking, and site amenities
- **City of Chanhassen Civic Campus**
New city hall, park pavilion, downtown civic campus park, pickleball courts, outdoor amphitheater, inclusive playground, splash pad, field event space
- **City of Woodbury Eagle Valley Golf**
Clubhouse renovations to staff/common spaces, new patio, and renovated bar/ kitchen spaces
- **Shakopee River City Center**
- **Cottage Grove Utility + Engineering Building**
- **Washington County Northern Environmental Center**
- **Chisago County Harris Shop**



MATHIAS TOBIN
PROJECT ENGINEER

During preconstruction, Mathias will be an integral part of our estimating team through each phase, providing leadership and management of

the project schedule, and will develop our pre-qualified subcontractor bidder's list for the City of Falcon Heights approval. He will also provide value management suggestions during the design drawing stages and preconstruction.

Once construction begins, Mathias will work with the project superintendent and will handle submittal reviews, document administration, monitor progress and schedule, quality management plan, progress pictures, and project closeout.

EDUCATION

BS, Construction Management
Louisiana State University, Baton Rouge, LA

CERTIFICATIONS/TRAINING

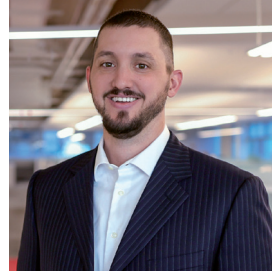
- Lean Sigma Six
- Certified Licensed Heavy Equipment Engineer
- OSHA 30-Hour Construction Safety

INDUSTRY EXPERIENCE 4 years

RELEVANT PROJECT EXPERIENCE

- **City of Rosemount - Police and Public Works Building, Rosemount, MN**
111,371 SF new Public Works, 48,629 SF Police Department facility, 7,400 SF cold storage building, and 4,800 SF salt storage building
- **Hayward Community School District, Hayward, WI**
- **Hayward High School**
44,197 SF addition and 390,061 SF renovation
- **Hayward Primary School**
72,432 SF interior renovation, heavy remodel, and deferred maintenance and 8,526 SF gymnasium addition
- **Hayward Intermediate School**
60,452 SF general renovations of existing school
- **Hayward Middle School**
86,867 SF remodel

3. Key Project Personnel



DUSTIN PHILLIPS
PROJECT DIRECTOR

Dustin will have corporate responsibility for the delivery of all preconstruction and construction services. He will direct KA resources to ensure we meet the City of

Falcon Heights goals and expectations.

EDUCATION

Masters, Construction Management, University of Wisconsin-Stout, Menomonie, WI
BS, Construction-Business Administration, University of Wisconsin-Stout, Menomonie, WI

PROFESSIONAL ASSOCIATIONS

- American Public Works Association - MN Chapter
- International Facility Management Association
- Association of Minnesota Counties
- University of Wisconsin-Stout, Advisory Committee and Board Member

CERTIFICATIONS/TRAINING

- OSHA 30-Hour Construction Safety
- Storm Water Pollution Prevention Planning (SWPPP)
- Leadership Development Program

INDUSTRY EXPERIENCE 18 years

RELEVANT PROJECT EXPERIENCE

- **Baldwin Woodville Community Athletic Complex**
- **City of New Brighton Hansen Park West**
- **SandVenture Aquatic Park Renovation**
- **Crystal Cove Aquatic Center**
- **City of Cottage Grove Glacial Valley Park Building**
- **City of New Brighton Sunny Square Park**
- **City of New Brighton Totem Pole Park**
- **City of Shakopee River City Centre Renovation**
- **City of Woodbury Eagle Valley Golf**
- **City of Chanhassen Civic Campus**
- **Cottage Grove Utility and Engineering Building**
- **Washington County Northern Environmental Center**

4. Safety Record

SEVEN-YEAR SAFETY RECORD

Safety is our top priority every day. At Kraus-Anderson, we strive for zero lost time on every project through good management and utilization of our resources, a proactive approach to safety, a robust supervisory presence, and hazard assessment. Our EMRs for the last seven years are shown below:

2024 0.66 | 2023 0.54 | 2022 0.46 | 2021 0.47 | 2020 0.47 | 2019 0.46 | 2018 0.50

Kraus-Anderson has been recognized annually with the AGC of America's Excellent Safety Record Award and the Minnesota Safety Council's Governor's Safety Award for Outstanding Achievement. **We are proud of our excellent safety record and EMR rating of 0.66, which places us within the top tier of construction firms nationally.**

TOTAL SAFETY ENVIRONMENT

Starting with KA's Safety Program, KA will develop a comprehensive Site-Specific Safety Plan, including fire prevention guidelines and a Jobsite Emergency Contingency Plan. We will also incorporate any of your safety programs and all applicable Federal, State, and Local regulations. We aim to provide KA employees, subcontractors, vendors, and visitors with a safe experience that meets expectations and guidelines.

All KA employees, subcontractors, vendors, and visitors will receive site-specific orientation and safety training before working on or visiting the job site.

You will be advised of all construction operations through daily and weekly coordination and progress meetings, ensuring all are informed of current/upcoming construction activities taking place in and around the jobsite.

5. Estimating + Scheduling

ESTIMATING METHODOLOGY

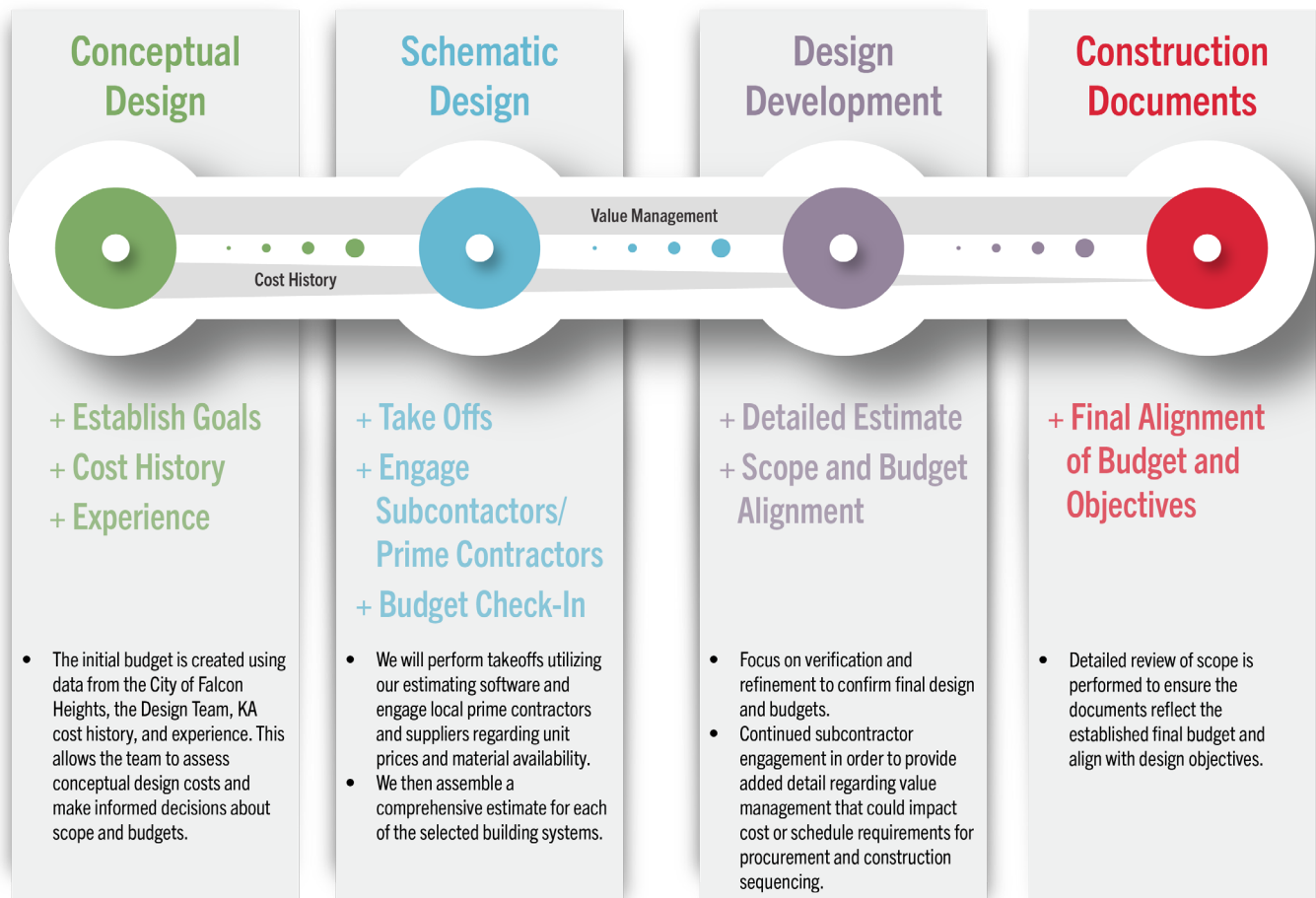
This team has the proven experience to successfully estimate and provide key information to keep the project on track. We start by creating an Overall Budget Summary that tracks both hard and soft costs, encompassing all aspects of the project. Done in partnership with the City of Falcon Heights and the design team, the document is then updated and referred back to throughout the project for accountability of pricing efforts.

ESTIMATES

KA will work with the City to provide four key estimates utilizing our WinEst Software:

1. Conceptual Estimate
2. Schematic Design (SD)
3. Design Development (DD)
4. Construction Document (CD)

Estimating is a collaborative effort. Our team will meet with the design team routinely during these estimates to confirm assumptions and provide clarifications. This eliminates any unwanted surprises on bid day.



5. Estimating + Scheduling

ACCURACY

Not only do Ben, Ken, Mathias, and Dustin have a wealth of experience with similar facilities, but KA also utilizes a robust program called **Modelogix** that will provide further insight and support estimates for accuracy. This system houses project cost histories down to the work scope that can be time- and location-adjusted to match the market in the Falcon Heights area.



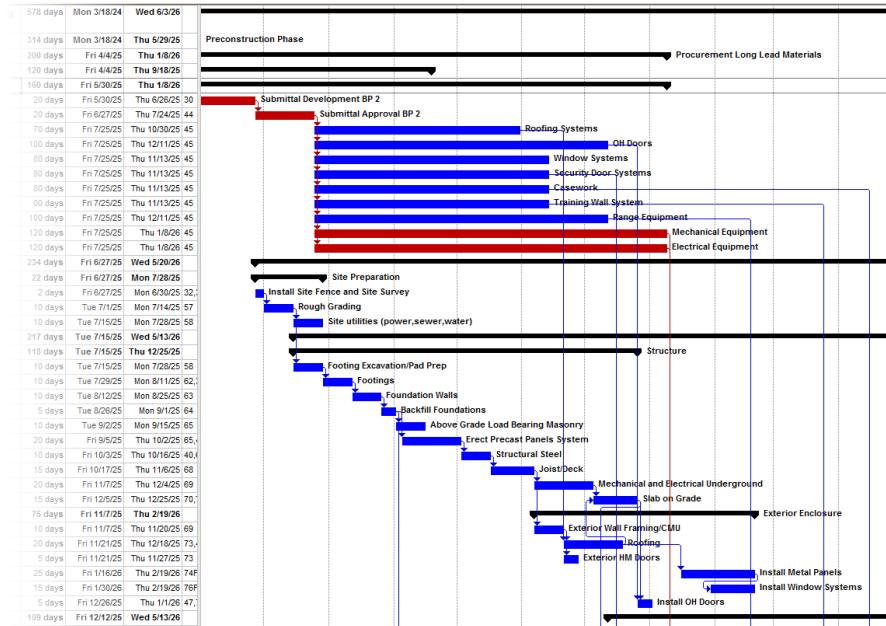
5. Estimating + Scheduling

OVERALL SCHEDULE: UNDERSTANDING + MONITORING

Monitoring and enforcing construction schedules are crucial measures for timely project completion. An on-site team continuously tracks and updates the schedule through site observations and weekly meetings, ensuring the project is staffed appropriately. Monitoring is done through 3-week look-ahead schedules, weekly project manager meetings, and Owner, Architect, and Contractor (OAC) meetings.

MONITORING THE SCHEDULE

- Regular progress updates
- Regular contractor feedback and collaboration
- 3-week look aheads
- Daily job site huddles with on-site foreman
- Challenges
 - » Bid packages (local bidding)
 - » Lead times
 - » Phasing
 - » Material and labor availability
 - » Seasonality



Heart of the City Plaza | Rochester, MN

5. Estimating + Scheduling

DELIVER + MAINTAIN BUDGET

Kraus-Anderson plays a pivotal role in the bidding process, developing a comprehensive bid strategy, carefully evaluating bids, and selecting the most qualified subcontractors.

To accomplish this, we:

- Strategically construct bid packages tailored to maximize value to the City of Falcon Heights.
- Optimize bid timing to enhance value and coverage.
- Manage the competitive subcontractor bidding process.
- Leverage Autodesk Build to transparently receive, review, and meticulously analyze all bids publicly.

We will hold a public opening of all bids. Kraus-Anderson will analyze all bids and interview potential lowest responsible bidders to review the scope of work. KA will present all bid and interview results to the City of Falcon Heights and make a recommendation for subcontractor awards and finalize.

We maintain a budget through constant communication with the City, design team, and contractors. We hold regular progress update meetings, obtain contractor feedback, and complete 3-week look aheads with the on-site Superintendent.

We track it all with you:

- Construction costs and Owner soft costs
- Clear history of project
- Ability to track all systems and costs

PROJECT REVENUE / FUNDING		
Bond Referendum	\$58,168,898.00	Council Approved Budget May 2023
TOTAL PROJECT REVENUE	\$58,168,898.00	
CONSTRUCTION COSTS		
New Construction - BP1	\$14,755,715.00	
New Construction - BP2	\$30,153,487.90	
Total Bid Day	\$44,909,202.90	
Construction Contingency		
Remaining Contingency	\$1,438,898	3.20%
Pending Change Orders	\$199,928.00	
Executed Change Orders	\$756,634.00	
Construction Management		
General Conditions	\$680,000	
Pre-Construction Services	\$28,000	
Site Services & Reimbursable	\$1,047,701	
CONSTRUCTION COSTS SUB TOTAL	\$49,060,364	
SOFT COSTS		
Design, Fees and Reimbursable	\$3,750,882.00	
Permits, Plan Reviews & Fees	\$470,273.98	
Utilities - Connections	\$102,505	
Pre-Construction Surveys & Studies	\$47,000	
Testing, Inspections & Commissioning	\$414,066	
Bidding, Legal, Finance, Insurance & Misc.	\$156,500	
Owner Purchase Orders (Moving, Storage etc)	\$75,000	
Soft Cost Contingency	\$250,811	5%
FF&E Expenses		
Furniture Allowance/Costs	\$640,000	
Specialty Equipment (PD)	\$400,000	See PD Equipment List
Equipment Allowance (PW)	\$750,000	See PW Equipment List
Technology Allowance	\$1,280,000	
FFE Contingency	\$153,500	5%
SOFT COSTS SUB-TOTAL	\$8,490,538.38	
TOTAL PROJECT COSTS	\$57,550,902.43	Constr. Cost + Soft Costs
VARIANCE (OVER) / UNDER	\$617,995.57	Total Project Revenue / Total Project Costs

5. Estimating + Scheduling

DETAILED ESTIMATE EXAMPLE



Client: City of Cottage Grove
Location: Cottage Grove, MN

Glacial Valley Park Building - DD Estimate

Date: 6/24/2022
Project Start: 04/2023
Document Date: Issue Date
Design Development

Row Number	Item Description	QTY	UOM	Total Unit Price	Grand Total
1	EXISTING CONDITIONS	5,100.00	GSF		
2	SITEWORK/BUILDING EARTHWORK	5,100.00	GSF	\$31.32	\$159,730
3	FOUNDATION / SOG	5,100.00	GSF	\$19.52	\$99,559
4	BUILDING STRUCTURE	5,100.00	GSF	\$60.43	\$308,190
5	EXTERIOR ENCLOSURE	5,100.00	GSF	\$166.70	\$850,150
6	ROOF	5,100.00	GSF	\$33.30	\$169,815
7	INTERIOR CONSTRUCTION	5,100.00	GSF	\$52.28	\$266,611
8	EQUIPMENT FURNITURE	5,100.00	GSF	\$10.82	\$55,175
9	FIRE PROTECTION	5,100.00	GSF	\$4.14	\$21,128
10	PLUMBING	5,100.00	GSF	\$18.27	\$93,200
11	HVAC	5,100.00	GSF	\$66.57	\$339,510
12	ELECTRICAL	5,100.00	GSF	\$21.57	\$110,000
13	AUDIO / VISUAL	5,100.00	GSF	\$3.11	\$15,846
14	ELECTRONIC SAFETY & SECURITY	5,100.00	GSF	\$5.18	\$26,410
15	GENERAL REQUIREMENTS	5,100.00	GSF	\$1.00	\$5,100
16	Subtotal	5,100.00	GSF	\$494.20	\$2,520,425
Rate	Item Description	Cost/GSF		Total	



Client: City of Cottage Grove
Location: Cottage Grove, MN

Glacial Valley Park Building - DD Estimate

Date: 6/24/2022
Project Start: 04/2023
Document Date: Issue Date
Design Development

Alternate Code	Item Description	Gross Total Costs
ALT 001	ALT 01: Mech Option 2 (Geothermal)	\$108,918
ALT 002	ALT 02: Removable Rubber Floor	(\$1,236)
ALT 003	ALT 03: Retractable Screens	\$11,020
ALT 004	ALT 04: Wood Ceiling	\$51,168
ALT 005	ALT 05: Exterior Mineral Wool in lieu of Stud Cavity Spray Foam	(\$30,000)
	Subtotal	\$139,870



CM Site Services & Fee
Kraus-Anderson Construction
Falcon Heights- Community Park Building

6. CM Site Services + Fee

PRE-CONSTRUCTION				
			Start Date:	Apr-2024
			Finish Date:	Aug-2024
	5.0	22	108	867
	Mo.	Wks	Days	Hours
Description	Quantity	Unit	Unit Cost	Total
Project Executive, Principal in Charge	0	HRS	\$200.00	\$ -
Senior Project Manager	43	HRS	\$171.00	\$ 7,410
Project Manager	22	HRS	\$149.00	\$ 3,228
Preconstruction Manager/Estimator	43	HRS	\$149.00	\$ 6,457
Quality Manager	8	HRS	\$147.00	\$ 1,115
MEP Coordinator	0	HRS	\$160.00	\$ -
Project Coordinator	0	HRS	\$72.00	\$ -
Subtotal PRECONSTRUCTION STAFF	116	HRS		\$ 18,210
Discounted PRECONSTRUCTION RATE				\$ 9,000
KA will provide all support necessary for estimating, budgeting, scheduling, bidding and facilitating contract agreements.				

CONSTRUCTION				
			Start Date:	Late Summer/Fall
			Finish Date:	Spring 2025
	6.0	26	130	1040
	Mo.	Wks	Days	Hours
Description	Quantity	Unit	Unit Cost	Total
Project Executive, Principal in Charge	7	HRS	\$ 200	In Fee
Senior Project Manager	52	HRS	\$ 170	\$ 8,840
Project Manager	520	HRS	\$ 150	\$ 78,000
Assistant Project Manager	0	HRS	\$ 122	\$ -
Project Superintendent (Full Time)	1,040	HRS	\$ 147	\$ 152,880
General Superintendent	52	HRS	\$ 157	\$ 8,164
Quality Manager	13	HRS	\$ 148	\$ 1,924
MEP Specialist	7	HRS	\$ 160	In Fee
Safety Manager	52	HRS	\$ 140	\$ 7,280
VDC/BIM	7	HRS	\$ 135	In Fee
Project Coordinator	208	HRS	\$ 74	\$ 15,392
Accounting	13	HRS	\$ 74	\$ 962
Subtotal CONSTRUCTION STAFF	1,970	HRS		\$ 273,442
Above is a standard rate sheet for staffing. These costs will be included in the budget the City of Falcon Heights will be provided, and can be expected to be between \$40-\$50K/month. We will develop these openly with the City once a schedule and scope are agreed upon.				
NOTE: KA supplies a full time Superintendent in this number.				

REIMBURSABLES				
Job Site Office Trailer	6.0	MOS	\$825.00	\$ 4,950
Office Equipment & Supplies	6.0	MOS	\$500.00	\$ 3,000
Travel and Expenses	6.0	MOS	\$650.00	\$ 3,900
Reproduction & Shipping	6.0	MOS	\$466.67	\$ 2,800
Pick-up Truck & Tools - Supt	6.0	MOS	\$2,200.00	\$ 13,200
Subtotal CONSTRUCTION STAFF				\$ 27,850
Reimbursable Expenses are estimated to be around \$5,000/month.				

FEE				
Subtotal CONSTRUCTION MANAGEMENT FEE	\$ 3,000,000	2.25%		\$ 67,500
KA is requesting a 2.25% fee as shown here. This fee percentage will not change if the scope is increased or decreased as the scope of the project is developed.				



MINNESOTA

MINNEAPOLIS

501 South Eighth Street
Minneapolis, MN 55404
612-332-7281

DULUTH

3716 Oneota Street
Duluth, MN 55807
218-722-3775

BEMIDJI

206 Beltrami Avenue
Bemidji, MN 56601
218-759-0596

ROCHESTER

502 2nd Avenue SW
Rochester, MN 55902
507-226-8690

NORTH DAKOTA

BISMARCK

1815 Schafer Street
Suite 200
Bismarck, ND 58501
701-989-7150

FARGO

1100 NP Avenue
Suite 201
Fargo, ND 58102
701-989-7150

WISCONSIN

MADISON

151 East Wilson Street
Suite 100
Madison, WI 53703
608-838-5444

MILWAUKEE

126 North Jefferson Street
Suite 402
Milwaukee, WI 53202
414-216-7249

ARIZONA

PHOENIX

SONORAN CREST
CONSTRUCTION COMPANY

*A division of
Kraus-Anderson Construction*

1401 N. 24th Street
Phoenix, AZ 85008
480-899-3240

ROC 102058



www.krausanderson.com

Kraus-Anderson is an EEO/AA Employer.

**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

March 27, 2024

No. 24-23

**RESOLUTION ACCEPTING OF PROPOSAL AND AUTHORIZATION OF CITY
ADMINISTRATOR TO EXECUTE PROFESSIONAL SERVICES AGREEMENT WITH
KRAUS-ANDERSON FOR CONSTRUCTION MANAGEMENT SERVICES FOR COMMUNITY
PARK’S BUILDING AND SITE IMPROVEMENT PROJECT**

WHEREAS, in 2023, the City hired WSB & Associates, Inc. (“WSB”) and HCM Architects to provide professional services for the Community Park renovation planned for 2024; and

WHEREAS, WSB is providing services such as topographic survey, geotechnical services, public engagement support, schematic design, final design, and project management services related to Community Park Renovation; and

WHEREAS, HCM Architects is providing architectural services in designing a new Community Park building; and

WHEREAS, the City would like to hire **Kraus-Anderson** to provide construction services related to the Community Park building and other bid alternates in Phase 1 and parking lot improvements and a new playground in Phase 2; and

WHEREAS, **Kraus-Anderson** would provide construction services to include: receiving and evaluating pre-construction bid estimates, managing subcontractors, providing a full-time Superintendent onsite to manage the project and working with WSB and HCM Architects on preconstruction plans; and

WHEREAS, **Kraus-Anderson’s** proposal is a professional services agreement for construction manager as advisor services not to exceed \$377,792.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Falcon Heights, Minnesota:

1. That the proposal from **Kraus-Anderson** is accepted by the City Council of the City of Falcon Heights.
2. That the City Administrator and City Attorney are authorized by the City Council of the City of Falcon Heights to finalize, negotiate and execute the following professional services agreements with **Kraus-Anderson** for construction management services provided in Community Park’s Building and Site Improvement Project:
 - a. A232 – *General Conditions of the Contract for Construction, Construction Manager as Adviser Edition*
 - b. A132 – *Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition*
 - c. C132 - *Standard Form of Agreement Between Owner and Construction Manager as Adviser*

Moved by:

Approved by: _____
Randall C. Gustafson
Mayor

GUSTAFSON _____ In Favor
MEYER
MIELKE _____ Against
LEEHY
WASSENBERG

Attested by: _____
Jack Linehan
City Administrator

DRAFT AIA® Document A132™ – 2019

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

AGREEMENT made as of the « 25th » day of « March » in the year « 2024 »
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, [email address](#) and other information)

City of Falcon Heights
2077 West Larpentour Avenue
Falcon Heights, MN 55113

and the Contractor:
(Name, legal status, address, [email address](#) and other information)

< TBD >
< >
< >

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

Falcon Heights Community Park Renovation
2050 Roselawn Avenue
Falcon Heights, MN 55113

The Construction Manager:
(Name, legal status, address, [email address](#) and other information)

Kraus-Anderson Construction Company
801 South 8th Street
Minneapolis, MN 55404

The Architect:
(Name, legal status, address, [email address](#) and other information)

Hagen, Christensen & McIlwain
4201 Cedar Avenue
Minneapolis, MN 55407

The Owner and Contractor agree as follows.

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

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

This document is intended to be used in conjunction with AIA Documents A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™-2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS

~~EXHIBIT A – INSURANCE AND BONDS~~

~~EXHIBIT B – DETERMINATION OF THE COST OF THE WORK~~

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ The date of this Agreement.

☐ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

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

« »

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

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion of the Project or Portions Thereof

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:

(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete

§ 3.4.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:

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

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

[☐] By the following date:

§ 3.4.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:

Portion of Work

Date to be substantially complete

§ 3.4.3 If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

[☒] Stipulated Sum, in accordance with Section 4.2 below

[☐] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below

[☐] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)

§ 4.2 Stipulated Sum

§ 4.2.1 The Contract Sum shall be (\$), subject to additions and deductions as provided in the Contract Documents.

§ 4.2.2 Alternates

§ 4.2.2.1 Alternates, if any, included in the Contract Sum:

Item

Price

§ 4.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

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

Item	Price	Conditions for Acceptance

§ 4.2.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price

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

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

~~§ 4.3 NOT USED Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~

~~§ 4.3.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.3.2 The Contractor's Fee:~~

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

«»

~~§ 4.3.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

«»

~~§ 4.3.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

«»

~~§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed «» percent («» %) of the standard rental rate paid at the place of the Project.~~

~~§ 4.3.6 Unit prices, if any:~~

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

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

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4 NOT USED Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~

~~§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.4.2 The Contractor's Fee:~~

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

«»

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

«»

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

« »

§ 4.4.5 Rental rates for Contractor owned equipment shall not exceed « » percent (« » %) of the standard rental rate paid at the place of the Project.

§ 4.4.6 Unit Prices, if any:

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

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

§ 4.4.7 Guaranteed Maximum Price

§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed « » (\$ « »), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 4.4.7.2 Alternates

§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price

§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price

§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption.)

« »

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

§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)

« »

§ 4.6 Other:

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

↔N/A

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

↔

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the « 25th » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « last » day of the « following » month. If an Application for Payment is received by the Construction Manager after the application date fixed above, ~~such Application for Payment will be processed with the next month's payment of the amount certified shall be made by the Owner not later than « » (« ») days after the Construction Manager receives the Application for Payment.~~

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.3.1 Prompt Payment to Subcontractors Required by MN Law. The Contractor shall pay each Subcontractor no later than ten 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. Per 471.425 Minnesota Statutes, the prime contractor must pay any subcontractor within ten days of the prime contractor's receipt of payment from the Public Body/Owner for undisputed services provided by the subcontractor. The prime contractor must pay the subcontractor interest of 1 ½ percent per month on any disputed amounts not paid on time. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.4.2 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.

§ 5.1.4.3 In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.4.3.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.4.3.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.5 ~~NOT USED~~

~~Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price~~

~~§ 5.1.5.1 With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~§ 5.1.5.2 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ 5.1.5.3 In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~§ 5.1.5.3.1 The amount of each progress payment shall first include:~~

- ~~.1 The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~.2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~.3 The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~§ 5.1.5.3.2 The amount of each progress payment shall then be reduced by:~~

- ~~.1 The aggregate of any amounts previously paid by the Owner;~~
- ~~.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Retainage withheld pursuant to Section 5.1.7.~~

~~§ 5.1.5.4 The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.~~

§ 5.1.5.5 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor 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.

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

§ 5.1.5.7 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

§ 5.1.6 NOT USED

Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price

§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 5.1.6.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 5.1.6.2.1 The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.6.2.2 The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 5.1.6.2.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

§ 5.1.6.3 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 Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.1.6.4 In accordance with AIA Document A232-2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.4.1 The amount of each progress payment shall first include:

- .1** That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

- ~~2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;~~
- ~~3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

§ 5.1.6.4.2 The amount of each progress payment shall then be reduced by:

- ~~1 The aggregate of any amounts previously paid by the Owner;~~
- ~~2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232-2019;~~
- ~~3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232-2019;~~
- ~~5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~6 Retainage withheld pursuant to Section 5.1.7.~~

§ 5.1.6.5 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.6.6 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor 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.

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

§ 5.1.6.8 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

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

« »

§ 5.1.7.1.1 The following items are not subject to retainage:

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

«»N/A

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

(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)

↔N/A

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:

(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)

↔As set forth in the AIA A232-2019 General Conditions.

§ 5.2 Final Payment

§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum

§ 5.2.1.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232-2019, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect.

§ 5.2.1.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, ~~or as follows:~~

↔

§ 5.2.2 NOT USED

~~Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price~~

~~§ 5.2.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when~~

- ~~.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232-2019, and to satisfy other requirements, if any, which extend beyond final payment;~~
- ~~.2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and~~
- ~~.3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.~~

~~§ 5.2.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:~~

↔

~~§ 5.3 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. (Insert rate of interest agreed upon, if any.)~~

↔ % ↔

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as 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.)

« »
« »
« »
« »

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☒ [« X »] Arbitration pursuant to Article 15 of AIA Document A232–2019.

☒ [« X »] Litigation in a court of competent jurisdiction.

☐ [« »] Other: *(Specify)*

« »

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

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

~~§ 7.1.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:~~

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

« »

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

§ 7.2 NOT USED

~~Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price~~

~~§ 7.2.1 Termination~~

~~§ 7.2.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.~~

~~§ 7.2.1.2 Termination by the Owner for Cause~~

~~§ 7.2.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:~~

- ~~1. Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~2. Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~

- ~~3 Subtract the aggregate of previous payments made by the Owner; and~~
~~4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232-2019.~~

~~§ 7.2.1.2.2 When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.~~

~~§ 7.2.1.2.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.~~

~~§ 7.2.1.3 Termination by the Owner for Convenience~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232-2019, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)~~

↔

§ 7.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232-2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232-2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232-2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

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§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

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§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in Article 11 of AIA Document A232–2019, as modified AIA Document A132™ 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in Article 11 of AIA Document A232–2019, as modified AIA Document A132™ 2019, Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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

«» To the email address of the Owner, Contractor, Construction Manager and Architect set forth in this Agreement.

§ 8.7 NOT USED Relationship of the Parties

~~Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.~~

§ 8.8 Other provisions:

§ 8.8.1 LIQUIDATED DAMAGES

§ 8.8.1.1 Contractor acknowledges that delays in completion of the Project beyond substantial completion, subject to adjustments as provided in the Contract Documents (the "Substantial Completion Date") would result in the loss of certain benefits to Owner and its constituents, which would be difficult or impracticable to fix or ascertain under presently known and anticipated facts and circumstances. Accordingly, the parties hereby agree that if Contractor fails to achieve Substantial Completion of the Project by the scheduled Substantial Completion Date, then for delays the Owner shall be entitled to recover from Contractor the following:

.1 For each calendar day that Substantial Completion of the Project is delayed beyond the Scheduled Substantial Completion Date: \$500.00 per day for contracts valued at or under \$500,000.00 or will be \$1,000.00 per day for contracts that exceed \$500,000.01 in total value.

§ 8.8.1.2 For purpose of this Section, Substantial Completion shall have occurred when a certificate of occupancy is issued for the building and it may be used for its intended purpose. If all work is not finally completed by _____, Owner shall be entitled to actual damages for damages occurring after that date, and liquidated damages for damages prior to that date. Contractor acknowledges that Owner anticipates using the project for a Health and Safety Center, which is critical to the community, and that Owner and its constituents would be substantially damaged by delays in project completion.

§ 8.8.1.3 Contractor shall pay any liquidated damages to Owner within fifteen (15) days of Owner's invoice. Owner has the right to submit invoices for liquidated damages on a weekly basis. Payment of liquidated damages shall not relieve the Contractor of its other obligations under the parties' Agreement. Owner, at its option, may deduct the amounts of any liquidated damages from amounts otherwise due to Contractor.

§ 8.8.1.4 The parties agree that the amount of liquidated damages fixed in this Section is a reasonable forecast of just compensation for harm to the Owner resulting from the Contractor's failure to meet the Project schedule, and is not a penalty. The parties further agree that in the event the amount of liquidated damages set forth in this Section is held to

be unenforceable or challenged by the Contractor as unenforceable for any reason, the Owner shall be entitled to recover its actual, direct, and consequential damages, if any, resulting from Contractor's delay in achieving Substantial Completion of the Work by the scheduled Substantial Completion Date.

§ 8.8.2 Certificate of Substantial Completion 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, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time which the Contractor shall complete all items on the list accompanying the Certificate to sixty (60) calendar days. The Contractor will submit a punchlist completion schedule within ten (10) days of receipt of Certificate of Substantial Completion. Any cost incurred by the Architect or Architect's consultants (after 60 calendar days of substantial completion) to close out the project will be deducted from the Contractor's contract by change order. 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. Warranties on punchlist items will commence on the date of final payment.

§ 8.8.2.1 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such 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. The payment shall be sufficient to increase the total payments to one hundred percent (100%) of the Contract Sum, less such amounts as the Owner and Architect shall determine for incomplete work and unsettled claims. The Owner has no obligation to make incremental retainage reductions after the initial determination for the incomplete work and unsettled claims.

« »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition
- .2 ~~Reserved. AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit~~
- .3 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition
- .4 ~~Reserved. AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)~~



- .5 Drawings

Number	Title	Date

- .6 Specifications

Section	Title	Date	Pages

- .7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ ~~AIA Document A132™ 2019, Exhibit B, Determination of the Cost of the Work~~

☐ ~~AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this Agreement.)~~

☐

☐ ~~The Sustainability Plan:~~

Title	Date	Pages

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

☐

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

OWNER (Signature)

☐

(Printed name and title)

CONTRACTOR (Signature)

☐

(Printed name and title)

DRAFT AIA® Document C132™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the « 25th » day of « March » in the year « 2024 »
(In words, indicate day, month and year.)

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

City of Falcon Heights
2077 West Larpentour Avenue
Falcon Heights, MN 55113

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

Kraus-Anderson Construction Company
801 South 8th Street
Minneapolis, MN 55404

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

Falcon Heights Community Park Renovation
2050 Roselawn Avenue
Falcon Heights, MN 55113

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

Hagen, Christensen & McIlwain [Architects](#)
4201 Cedar Avenue
Minneapolis, MN 55407

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132™-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. AIA Document A232™-2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

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

« »

§ 1.1.2 The Project's physical characteristics:

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

« »

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

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

« \$3,500,000.00 »

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

.1 Design phase milestone dates, if any:

« TBD »

.2 Construction commencement date:

« [Anticipated Fall 2024](#) »

.3 Substantial Completion date or dates:

« [TBD](#) »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid or negotiated contract.)

« [Multiple Prime Contracts](#) »

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
(Identify any requirements for fast-track scheduling or phased construction and, if applicable, list number and type of bid/procurement packages.)

« [Assumes one bid package](#) »

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« [N/A](#) »

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall ~~complete and incorporate AIA Document E235™-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement~~ endeavor to define the terms, conditions and services related to the Owner's Sustainable Objective and may complete and incorporate AIA Document E235™-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement. If E235-2019 is incorporated into this Agreement, the Owner and Construction Manager shall incorporate the completed E235-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

« [N/A](#) »

§ 1.1.9 The Owner identifies the following representative in accordance with Section 5.5:
(List name, address, and other contact information.)

«[»Jack Linehan – City Administrator](#)
«[»City of Falcon Heights](#)
«[»2077 West Larpenteur Avenue](#)
«[»Falcon Heights, MN 55113](#)
«[»Direct Phone: \(651\) 792-7611](#)
«[»Email: jack.linehan@falconheights.org](#)»

§ 1.1.10 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address, and other contact information.)

« [N/A](#) »

§ 1.1.11 The Owner shall retain the following consultants and Contractors:
(List name, legal status, address, and other contact information.)

.1 Land Surveyor:

« [TBD](#) »« »

« »

« »

« »

« »

.2 Geotechnical Engineer:

« [TBD](#) »« »

« »

« »

« »

« »

.3 Civil Engineer:

« [TBD](#) »« »

« »

« »

« »

« »

.4 Contractors, as defined in Section 1.4:

« [TBD](#) »

.5 Separate Contractors, as defined in Section 1.4:

« [TBD](#) »

.6 Other, if any:

(List any other consultants retained by the Owner.)

« [N/A](#) »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Section 2.5:
(List name, address, and other contact information.)

«»[Ken Francois – Senior Project Manager](#)
«»[Kraus-Anderson Construction Company](#)
«»[801 South 8th Street](#)
«»[Minneapolis, MN 55404](#)
«»[Cell Phone: 612-859-1697](#)
«»[Email: ken.francois@krausanderson.com](#)

§ 1.1.13 The Construction Manager's staffing plan as required under Section 3.3.3 shall include:
(List any specific requirements and personnel to be included in the staffing plan, if known.)

« [TBD](#) »

§ 1.1.14 The Construction Manager's consultants retained under Basic Services, if any:

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

« N/A »

§ 1.1.15 The Construction Manager's consultants retained under Supplemental Services:

« N/A »

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

« N/A »

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Construction Manager shall, by appropriate written agreement, appropriately adjust the Construction Manager's services, schedule for the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The Construction Manager shall assist the Owner and Architect in establishing~~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~~may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 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.

§ 1.4 The term "Contractors" refers to persons or entities who perform Work under contracts with the Owner that are administered by the Construction Manager and Architect. The term "Contractors" is used to refer to such persons or entities, whether singular or plural. The term does not include the Owner's own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Construction Manager and Architect.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall coordinate its services with those services provided by the Owner, the Architect, the Contractors, and the Owner's other consultants and Separate Contractors. The Construction Manager shall be entitled to rely on, and shall not be responsible for, the accuracy and completeness of services and information furnished by the Owner, the Architect, and the Owner's other consultants and Separate Contractors. The Construction Manager shall provide prompt written notice to the Owner if the Construction Manager becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.5 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.6 The Construction Manager, as soon as practicable after execution of the Agreement, shall notify the Owner in writing of the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Construction Manager's proposed key staff members, the Owner may reply to the Construction Manager in writing, stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection. The Construction Manager shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Construction Manager shall not change its key staff members without the Owner's consent, which shall not be unreasonably withheld or delayed.

§ 2.7 Except with the Owner's knowledge and consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager's judgment with respect to this Project.

§ 2.8 The Construction Manager shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Construction Manager normally maintains, the Owner shall pay the Construction Manager as set forth in section 11.7.

§ 2.8.1 Commercial General Liability with policy limits of not less than «OneTwo Million Dollars» (\$ «42,000,000») for each occurrence and «Two Million Dollars» (\$ «2,000,000») in the aggregate for bodily injury and property damage.

§ 2.8.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than «OneTwo Million Dollars» (\$ «42,000,000») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.8.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.8.1 and 2.8.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.8.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than «Five Hundred Thousand Dollars» (\$ «500,000») each accident, «Five Hundred Thousand Dollars» (\$ «500,000») each employee, and «Five Hundred Thousand Dollars» (\$ «500,000») policy limit.

§ 2.8.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than «Five Million Dollars» (\$ «5,000,000») per claim and «Five Million Dollars» (\$ «5,000,000») in the aggregate.

§ 2.8.6 ~~Reserved. Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.~~ [JM1]

§ 2.8.7 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.8.

§ 2.9 The Construction Manager shall assist the Owner, Architect, and other Project participants in establishing building information modeling and digital data protocols for the Project, which may be documented using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 2.10 ~~If a~~ centralized electronic document management system will be used on the Project, ~~and the Construction Manager shall be designated the Responsible Project Participant in section 3.5 of E203-2013,~~ responsible for managing and maintaining the centralized electronic document management system. ~~The centralized electronic document management system shall include all items listed in Article 3 of E203, and the following: (List any items to be included that are not listed in Article 3 of E203-2013.)~~

↔

§ 2.11 The Construction Manager shall retain all Project related documents and information it receives, and the Owner and Architect shall have access to the documents and information. The Construction Manager shall transmit the documents and information to the Owner at final completion.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in this Article 3, and include usual and customary Preconstruction and Construction Phase Services. Services not set forth in this Article 3 are Supplemental or Additional Services. The Owner, Construction Manager, and Contractors 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.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

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

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, for the Owner's approval, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work. The Construction Manager shall periodically update the Construction Management Plan, for the Owner's approval, over the course of the Project.

§ 3.2.4 The Construction Manager shall prepare and periodically update the Project schedule included in the Construction Management Plan 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 highlight items that affect the Project's timely completion.

§ 3.2.5 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered in advance of construction, obtaining the required reviews and approvals of authorities having jurisdiction over the Project, and the occupancy requirements of the Owner.

§ 3.2.6 Based on the preliminary design and information prepared or provided by the Architect and other Owner consultants, the Construction Manager shall prepare, for the Architect's review and Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques, including the establishment of sufficient contingency to reasonably anticipate the development of the Project's design documents.

§ 3.2.7 The Construction Manager shall review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project

requirements, on constructability; availability of materials and labor; sequencing for phased construction; 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.

§ 3.2.8 The Construction Manager shall review recommendations for systems, materials, or equipment for the impact upon cost, schedule, sequencing, constructability, and coordination among the Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, and assist the Owner and Architect with the coordinate [JM2] resolution, as necessary, of any such impacts.

§ 3.2.9 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for further development of the design, bidding or negotiating, price escalation, and market conditions. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.2.10 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that the design, or details, adversely affect cost, scope, schedule, constructability, or quality of the Project.

§ 3.2.11 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.12 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

§ 3.2.13 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts for Construction. The Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.14 The Construction Manager shall make recommendations about, and coordinate the ordering and delivery of, materials in support of the schedule, including those that must be ordered in advance of construction.

§ 3.2.15 The Construction Manager shall assist the Owner in selecting, retaining, and coordinating the professional services of surveyors, geotechnical engineers, special consultants, and construction materials testing required for the Project.

§ 3.2.16 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.17 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and quasi- governmental authorities for inclusion in the Contract Documents.

§ 3.2.18 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.19 The Construction Manager, in consultation with the Owner, shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager shall assist the Owner and the Architect with the development of the Bidding Documents, which consist of bidding requirements and proposed Contract Documents. The Construction Manager, with the assistance of the Architect, shall issue Bidding Documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of Bidding Documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 The Construction Manager shall submit a list of prospective bidders for the Architect's review and the Owner's approval.

§ 3.2.21 The Construction Manager, with the assistance of the Architect, shall review bids, and prepare bid analyses, and make recommendations to the Owner for the Owner's award of Contracts for Construction or rejection of bids.

§ 3.2.22 The Construction Manager, with the assistance of the Architect, shall assist the Owner in preparing Contracts for Construction. The Construction Manager shall advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors. The Owner will review and approve contracts consistent with the Owner's approval process.

§ 3.2.23 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.2.24 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities per the agreed-upon terms, conditions and services related to the Owner's Sustainable Objectives as required in AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

§ 3.3 Construction Phase

§ 3.3.1 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2019, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement.

§ 3.3.2 Subject to Section 4.2 and except as provided in Section 3.3.30, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.3.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 The Construction Manager shall review and analyze the construction schedules provided by the Contractors to update the Project schedule, incorporating the activities of the Owner, Architect, and Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as

required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss matters such as procedures, progress, coordination, and scheduling of the Work, and to develop solutions to issues identified. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Contractors.

§ 3.3.7 In accordance with the Contract Documents and the latest approved Project schedule, and utilizing information from the Contractors, the Construction Manager shall review, analyze, schedule and coordinate the overall sequence of construction and assignment of space in areas where the Contractors are performing Work.

§ 3.3.8 The Construction Manager shall coordinate all tests and inspections required by the Contract Documents or governmental authorities, observe the on-site testing and inspections, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual costs and budgeted or estimated costs. If a Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor's cost control information to the Owner.

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project and include them in the Construction Manager's progress reports.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Contractors for progress and final payments.

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2 Where there is more than one Contractor responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor; (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment; (3) prepare a Project Application and Certificate for Payment; (4) certify the total amount the Construction Manager determines is due all Contractors collectively; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager'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 the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1)

an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) results of subsequent tests and inspections; (3) correction of minor deviations from the Contract Documents prior to completion; and (4) specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, procedures, or sequences for a Contractor's own Work; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate each Contractor's right to payment; or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.13 The Construction Manager shall obtain and review the safety programs developed by each Contractor solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations for any additional safety measures to be considered in the Work of the Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.22.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible to the Owner for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations, and requests for information of the meaning and intent of the Drawings and Specifications, and provide its written recommendation [JM3]. The Construction Manager shall assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if the proposed changes are accepted or required by the Owner, prepare Change Orders or Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.2.2.7.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 3.3.20 The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples, and other submittals from the Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractors, the Owner, or the Architect.

§ 3.3.20.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractors by the Contract Documents, the Construction Manager shall review those submittals for sequencing, constructability, and coordination impacts on the other Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, and ~~coordinate~~ assist the Owner [JM4] and the Architect with resolution, as necessary, of any such impacts.

§ 3.3.21 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.21.1 The Construction Manager shall collect, review for accuracy, and compile the Contractors' daily logs; and include them in the Construction Manager's reports prepared and submitted in accordance with section 3.3.21.2.

§ 3.3.21.2 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 identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports;
- .11 Photographs to document the progress of the Project;
- .12 Status reports on permits and approvals of authorities having jurisdiction; and
- .13 Any other items the Owner may require:

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§ 3.3.21.3 In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- .1 Contractors' work force reports;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require:

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§ 3.3.22 Utilizing the documents provided by the Contractors, the Construction Manager shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Owner, Architect, and Contractors. Upon completion of the Project, the Construction Manager shall deliver them to the Owner.

§ 3.3.23 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.24 With the Owner's maintenance personnel, the Construction Manager shall observe the Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.25 When the Construction Manager considers each Contractor's Work or a designated portion thereof substantially complete, the Construction Manager shall, jointly with that Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.26 When the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractors. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall perform an inspection to confirm the completion of the Work of the Contractors and make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection. The Construction Manager shall assist the Architect in conducting the final inspection.

§ 3.3.27 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractors: (1) certificates of insurance ; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractors under the Contract Documents, including warranties and similar submittals.

§ 3.3.28 The Construction Manager shall coordinate receipt, and delivery to the Owner, of other items provided by the Contractors, such as keys, manuals, and record drawings. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment, or a final Application for Payment and final Certificate for Payment, upon the Contractors' compliance with the requirements of the Contract Documents.

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

§ 3.3.30 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner and Architect to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Supplemental Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the

Construction Manager is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Construction Manager's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Construction Manager or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Construction Manager, Owner or not provided)
§ 4.1.1.1 Measured drawings	Owner
§ 4.1.1.2 Tenant-related services	Owner, if required
§ 4.1.1.3 Commissioning	Owner, if required
§ 4.1.1.4 Development of a commissioning plan	Owner, if required
§ 4.1.1.5 Sustainable Project Services pursuant to Section 4.1.3	N/A
§ 4.1.1.6 Furniture, furnishings and equipment delivery, and installation coordination	Construction Manager, if required
§ 4.1.1.7 Furniture, furnishings and equipment procurement assistance	Owner, if required N/A
§ 4.1.1.8 Assistance with site selection	N/A
§ 4.1.1.9 Assistance with selection of the Architect	Owner
§ 4.1.1.10 Furnish land survey	Owner, if required
§ 4.1.1.11 Furnish geotechnical engineering services	Owner
§ 4.1.1.12 Provide insurance advice	Owner, if required
§ 4.1.1.13 Provide supplemental Project risk analysis and mitigation strategies	Owner, if required
§ 4.1.1.14 Stakeholder relationships management	N/A
§ 4.1.1.15 Owner moving coordination	N/A
§ 4.1.1.16 Coordination of Owner's Separate Contractors	Construction Manager, if required
§ 4.1.1.17 Other Supplemental Services	N/A

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Construction Manager's responsibility is provided below.

(Describe in detail the Construction Manager's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

« N/A »

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

« N/A »

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall provide, as a Supplemental Service, the Sustainability Services per the agreed-upon terms, conditions and services related to the Owner's Sustainable Objective required in AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement. The Owner shall compensate the Construction Manager as provided in Section 11.2.

§ 4.2 Construction Manager's Additional Services

§ 4.2.1 The Construction Manager may provide Additional Services after execution of this Agreement, without invalidating this Agreement. Except ~~for to the extent~~ services are required due to the fault of the Construction

Manager, any Additional Services provided in accordance with this Section 4.2 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ 4.2.2 Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following Additional Services until the Construction Manager receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6. Services necessitated by sections 6.4 and 6.6 shall not be considered additional services;
- .2 Services necessitated by the enactment or revision of codes, laws, regulations or official interpretations after the date of this Agreement;
- .3 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's other consultants or contractors;
- .4 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- .5 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work; or
- .8 Assistance to the Initial Decision Maker.

§ 4.2.3 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Construction Manager's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Construction Manager of the Owner's determination. The Owner shall compensate the Construction Manager for the services provided prior to the Construction Manager's receipt of the Owner's notice:

- .1 Providing assistance to the Initial Decision Maker in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work.
- .2 Services required in an emergency to coordinate the activities of a Contractor or Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.15.

§ 4.2.4 Except for services required under Section 3.3.30, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work, or (2) the anticipated date of Substantial Completion identified in the Initial Information, whichever is earlier, shall be compensated as Additional Services to the extent the Construction Manager incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the 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, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. 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.

§ 5.3 The Owner acknowledges that accelerated, phased, or fast-track design and construction provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Owner shall provide the Construction Manager with a copy of the scope of services in the agreement executed between the Owner and Architect, and any further modifications to the Architect’s scope of services in the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner’s behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager’s services.

§ 5.6 Unless otherwise required by this Agreement to be provided by the Construction Manager, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 Unless otherwise required by this Agreement to be provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall provide the Supplemental Services designated as the Owner’s responsibility in Section 4.1.1.

§ 5.9 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

§ 5.10 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager’s request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner’s consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Construction Manager in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.11 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.12 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.

§ 5.13 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect’s Instruments of Service or any fault or defect in the Construction Manager’s services.

§ 5.14 The Owner reserves the right to perform construction and operations related to the Project with the Owner’s own forces, and to award contracts in connection with the Project which are not part of the Construction Manager’s responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent

action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.15 The Owner shall communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager 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 Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.16 Before executing the Contracts for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contracts for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.17 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractors to provide the Construction Manager access to the Work wherever it is in preparation or progress.

§ 5.18 Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce lien rights.

§ 5.19 The services, information and reports provided by the Owner pursuant to this Article 5 shall be provided at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget for the Cost of the Work, and the estimates of the Cost of the Work prepared by the Construction Manager, represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials; or equipment; the Contractors' methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Construction Manager.

§ 6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 6.4 If the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to revise the Project program, scope, or quality to reduce the Cost of the Work pursuant to Section 6.5.3, or if the bids or proposals received from the prospective Contractors, in the aggregate, exceed the Owner's budget for the Cost of the Work, and the Owner chooses to revise the Project program, scope, or quality to reduce the Cost of the Work, the Construction Manager shall cooperate with the Owner and Architect to develop the necessary revisions, update the cost estimate, and obtain additional bids. The Construction Manager will perform the services described in Sections 6.4 and 6.6 without additional compensation.

ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this 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 Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2019, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Construction Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. The Construction Manager's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Construction Manager's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Construction Manager and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with

applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them 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 this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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 proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

☒ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

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

§ 8.3 Arbitration

~~**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement 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 this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~**§ 8.3.1.1** 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, dispute or other matter in question 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, dispute or other matter in question.~~

~~**§ 8.3.2** The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 8.3.4 Consolidation or Joinder

~~§ 8.3.4.1 Either party, at its sole discretion, 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).~~

~~§ 8.3.4.2 Either party, at its sole discretion, 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.~~

~~§ 8.3.4.3 The Owner and Construction Manager grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Construction Manager under this Agreement.~~

~~§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.~~

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Construction Manager all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 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.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Construction Manager for services performed prior to termination, Reimbursable Expenses incurred, ~~and costs attributable to termination, including the costs attributable to the Construction Manager's termination of consultant agreements.~~

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Construction Manager the following termination fee:
(Set forth below the amount of any termination fee, or the method for determining any termination fee.)

«»Payment for services performed and costs incurred by reason of such termination, along with reasonable profit on services not completed during the Construction Phase.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement 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 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2019, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager and the Architect.

§ 10.3 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, including any payments due to the Construction Manager by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least 14 days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Construction Manager.

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall provide professional credit for the Architect and the Contractors in the Construction Manager's promotional materials for the Project. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Construction Manager or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.8.2 The Construction Manager must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the Owner pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by the Construction Manager pursuant to this Agreement. The Construction Manager is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event the Construction Manager receives a request to release data, the Construction Manager must immediately notify the Owner. The Owner will give the Construction Manager instructions concerning the release of the data to the requesting party before the data is released. Construction Manager agrees to defend, indemnify, and hold the Owner, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from Construction Manager's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of protected data. The terms of this section shall survive the cancellation or termination of this Agreement.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement 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 Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 Pursuant to Minnesota Statute § 471.25, Subdivision 4a, the Construction Manager must pay any subcontractor within ten (10) days of the Construction Manager's receipt of payment from the Owner for undisputed services provided by the subcontractor. The Construction Manager must pay interest of one and one-half percent (1½ %) per month or any part of a month to subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Construction Manager shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Construction Manager shall be awarded its costs and disbursements, including attorney's fees, incurred in bring the action.

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows:

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

← ~~OPTION~~ Lump Sum of \$ 9,000.00 for Five (5) months of Preconstruction Phase Services from the date of this Agreement. Should the Preconstruction Phase exceed the above period, the Construction Manager's time shall be billed at the hourly rates set forth in Section 11.5.

§ 11.1.2 For Construction Phase Services in Section 3.3:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

← ~~OPTION~~ The Construction Manager shall be paid (i) a fee of 2.25 % of the Cost of the Work defined in Article 6, (ii) ~~the Construction Manager's costs for administrating and managing the Project at the hourly rates set forth in Section 11.5.1, a stipulated sum of \$301,292.00 for administering and managing the Project,~~ (iii) the costs of Construction Manager's field labor for general conditions work at the hourly rates set forth in section 11.5.2, and (iv) any Reimbursable Expenses.

This stipulated sum assumes a Six (6)-month schedule for the Construction Phase. Should the Construction Phase extend beyond Six(6) months, the Construction Manager is entitled to charge additional amounts at the hourly rates set forth per section 11.5.1 not to exceed the following: (i) \$11,588.00 per each additional week, or (ii) \$50,215.00 per each additional month.

§ 11.2 For the Construction Manager's Supplemental Services designated in Section 4.1.1, and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

«—» At the hourly rates set forth in Sections 11.5.1 and 11.5.2, plus Reimbursable Expenses.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation.)

«—» At the hourly rates set forth in Sections 11.5.1 and 11.5.2, plus Reimbursable Expenses.

§ 11.4 Compensation for Supplemental and Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus « two point two-five » percent (« 2.25 » %), or as follows:

(Insert amount of, or basis for computing, Construction Manager's consultants' compensation for Supplemental or Additional Services.)

« »

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices.

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

OPTION:

§ 11.5.1 Hourly Rates for administrative and management personnel:

Personnel Category	Rate Per Hour
Project Director	\$200.00 / hour
Senior Project Manager/Construction Executive/Project Executive	\$170.00 / hour
Project Manager	\$150.00 / hour
Assistant Project Manager	\$122.00 / hour
Project Engineer/Field Engineer	\$110.00 / hour
Director of Preconstruction	\$161.00 / hour
Preconstruction Manager/Estimator	\$149.50 / hour
Assistant Estimator	\$108.00 / hour
Safety Director	\$158.00 / hour
Safety Engineer/Safety Manager	\$140.00 / hour
Quality Director	\$184.00 / hour
Quality Manager	\$148.00 / hour
MEP Specialist	\$160.00 / hour
VDC/BIM	\$135.00 / hour
General Superintendent	\$157.00 / hour
Field Superintendent	\$147.00 / hour
Assistant Superintendent	\$130.00 / hour
Project Coordinator/Accounting/Marketing	\$74.00 / hour
Computer/IT	\$95.00 / hour
Yard Delivery	\$125.00 / hour
Project Intern	\$55.00 / hour

The rates set forth above shall be in effect through December 31, —2024. Thereafter the rates shall be increased by Three percent (—3.0 %) per year as of January 1 of each subsequent year.

For the Construction Manager's costs for administrating and managing the Project referenced in Section 11.1.2(ii), the Construction Manager's compensation shall be a stipulated sum of \$ _____. This stipulated sum assumes a _____ month schedule for the Construction Phase. Should the Construction Phase extend beyond _____ months, the Construction Manager is entitled to charge additional amounts at the hourly rates set forth above not to exceed the following: (i) \$ _____ per each additional week, or (ii) \$ _____ per each additional month.

§ 11.5.2 Regular Hourly Rates for field labor personnel for any miscellaneous general requirements or general conditions-type work:

Personnel Category	Rate Per Hour
Carpenter - Journeyman	\$104.90 / hour
Carpenter - Foreman	\$110.01 / hour
Carpenter – General Foreman	\$114.39 / hour
Laborer - Journeyman	\$95.63 / hour
Laborer - Foreman	\$100.01 / hour
Operator – G1	\$107.32 / hour
Operator – G2	\$106.81/ hour
Operator – G3	\$104.67 / hour
Operator – G4	\$104.16 / hour
Operator – G5	\$101.25 / hour
Operator – G6	\$98.96 / hour
Operator – G7	\$97.25 / hour
Operator – G8	\$94.2 / hour
Carpenter Journeyman	\$ ____ / hour
Carpenter Foreman	\$ ____ / hour
Carpenter General Foreman	\$ ____ / hour
Laborer Journeyman	\$ ____ / hour
Laborer Foreman	\$ ____ / hour
Operator G1	\$ ____ / hour
Operator G2	\$ ____ / hour
Operator G3	\$ ____ / hour
Operator G4	\$ ____ / hour
Operator G5	\$ ____ / hour
Operator G6	\$ ____ / hour
Operator G7	\$ ____ / hour
Operator G8	\$ ____ / hour

The rates set forth above shall be increased in accordance with the terms of any applicable collective bargaining agreement.

The rates for any miscellaneous tool or equipment rentals shall be at the rates set forth in Exhibit A.

«—»

Employee or Category

Rate (\$0.00)

§ 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;

- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Professional photography, and presentation materials requested by the Owner;
- .8 If required by the Owner, and with the Owner's prior written approval, the Construction Manager's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Construction Manager's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; ~~and~~
- .11 General conditions expenditures;
- .12 General liability, professional liability, and umbrella liability insurance at a rate of 0.95% of the cost of the Construction Manager's Preconstruction and Construction Phase services;
- .13 Coordination of warranty work required to be performed by the Contractors after substantial completion of the Project at a rate of 0.15% of the Cost of the Work defined in Article 6; and
- .14 Collaboration Technology
- .1544 Other similar Project-related expenditures.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus « Two point Two-Five » percent (« 2.25 » %) of the expenses incurred.

§ 11.7 **Construction Manager's Insurance.** If the types and limits of coverage required in Section 2.8 are in addition to the types and limits the Construction Manager normally maintains, the Owner shall pay the Construction Manager for the additional costs incurred by the Construction Manager for the additional coverages as set forth below. *(Insert the additional coverages the Construction Manager is required to obtain in order to satisfy the requirements set forth in Section 2.8, and for which the Owner shall reimburse the Construction Manager.)*

« »

§ 11.8 Payments to the Construction Manager

§ 11.8.1 Initial Payment

§ 11.8.1.1 An initial payment of « Zero » (\$ « 0.00 ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.8.2 Progress Payments

§ 11.8.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « thirty » (« 30 ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. *(Insert rate of monthly or annual interest agreed upon.)*

« » % « » The rate of interest required by applicable law, or if no such rate is required by applicable law, invoices due and unpaid under this Agreement shall bear interest from the date payment is due at an annual rate of interest of two percent (2%) over the reference rate of interest from time to time announced by U.S. Bank Minneapolis, NA as its reference rate, with each change in interest rate hereunder to become effective on the date the corresponding change in such reference rate as announced by U.S. Bank Minneapolis, NA becomes effective.

§ 11.8.2.2 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work, unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.8.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

« »

§ 12.1 DOCUSIGN ELECTRONIC SIGNING SYSTEM. The Construction Manager has an agreement with DocuSign, Inc. ("DocuSign") with respect to the DocuSign electronic signing system (the "DocuSign System"). The DocuSign System may be used to facilitate the administration and execution of the Owner's Construction Contracts with the Multiple Prime Contractors, as well as various other Contract Documents requiring signatures. Should the Owner elect to have the Construction Manager use the DocuSign System with respect to any portion of the Project, the Owner acknowledges and agrees that (i) the Owner conducted its own independent investigation and evaluation as to all legal and other considerations related to its decision to use the DocuSign System on the Project, (ii) the Owner did not rely on any advice, recommendations or representations of the Construction Manager in making the Owner's independent determination to use the DocuSign System on the Project, (iii) the Construction Manager and DocuSign are not affiliated with each other and the Construction Manager does not warrant or guarantee any portion of the DocuSign System, (iv) the Construction Manager does not warrant or guarantee that the DocuSign system complies with or satisfies any legal requirements applicable to its use on the Project, and (v) to the fullest extent permitted by law, the Owner waives, and shall hold harmless and indemnify the Construction Manager from and against, all claims, causes of action, costs, expenses and damages (including reasonable attorney's fees) arising out of or resulting from the use of the DocuSign System on the Project.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document C132™–2019, Standard Form Agreement Between Owner and Construction Manager as Adviser
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[« »] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this agreement.)

« »

[« »] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.2.)

« »

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

« Exhibit A – Tool and Equipment Rental Rates »

This Agreement is entered into as of the day and year first written above. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this document by facsimile, pdf or other generally accepted electronic means (e.g., DocuSign) shall be effective as delivery of a manually executed counterpart of this document.

INSERT NAME OF OWNER; City of Falcon Heights _____ Kraus-Anderson® Construction
Company

OWNER (Signature)

« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

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

Falcon Heights Community Park Renovation
2050 Roselawn Avenue
Falcon Heights, MN 55113
«-»
«-»

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Kraus-Anderson Construction Company
801 South 8th Street
Minneapolis, MN 55404
«-»«-»
«-»

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

City of Falcon Heights
2077 West Larpentour Avenue
Falcon Heights, MN 55113
«-»«-»
«-»

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

Hagen, Christensen & McIlwain Architects
4201 Cedar Avenue
Minneapolis, MN 55407
«-»«-»
«-»

TABLE OF ARTICLES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 **The Contract Documents.** The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, [Performance Bond or Payment Bond, if required](#), 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.** 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 the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their 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 other Contractors, and by the Owner's own forces and Separate Contractors.

§ 1.1.5 **Contractors.** Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 **Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§ 1.1.7 **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.

§ 1.1.8 **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.

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

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

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The Contract Documents are to be read and interpreted as a whole. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor, in proper operating condition, and to require Contractor to provide the highest quality and greatest quantity consistent with the Contract Documents. If there are inconsistencies within or among part of the Contract Documents or between the Contract Documents and applicable standards, codes or ordinances, the Contractor shall provide the better quality and greater quantity of Work or comply with the more stringent requirements; either or all in accordance with the Architect's interpretation. The terms and conditions of this subparagraph 1.2.1 shall not relieve the Contractor of any of its obligations as set forth in Article 3. 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 Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charges or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference that may be found shall be submitted to the Construction Manager and Architect for resolution before proceeding with the Work.

.2 If a minor change in the Work is necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure to the Construction Manager for approval by the Architect before making the change.

The Owner shall not be required to make any adjustment to either the Contract Sum or Contract Time because of any failure by the Contractor to comply with the requirements of this Subparagraph 1.2.1. Actual or alleged conflicts or inconsistencies between the Drawings and Specifications or other Contract Documents shall be brought to the Architect's and Construction Manager's attention in writing, prior to performing the affected Work. The Architect's and Construction Manager's directions, as communicated through the Construction Manager, shall be followed by the Contractor.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, unless it is specified that a subcontract include specific phases or elements to complete a certain part of the Work for reasons of coordination or responsibility. Where the Specification has been divided into sections, it is for convenience in use. The Architect assumes no responsibility for proper placement of phases of the Work into the proper division or section nor the arrangement of Work shown on the Drawings. The Architect shall not be obligated to enter into jurisdictional or other disputes as a result of the organization, arrangement or location of parts of the Work in Specifications or on Drawings, nor to serve as arbiter to establish subcontract limits. Unless otherwise specified, the scope of work of each section shall be to furnish labor, materials, equipment, skill, erection, installation, services and related items for the phase of work of that section, as required by the Drawings, as specified or as otherwise required to provide and complete the entire work of the section.

§ 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.

§ 1.2.4 The general character and scope of the Work is called for by the Contract Documents. Where a portion of the Work is fully drawn and the remainder is merely indicated, the portion fully drawn shall apply to all similar parts of the Work. Drawings intended primarily as information for one trade may not necessarily show the work of other trades, which shall not be construed as there being no related materials or adjacent work.

§ 1.2.5 Figured dimensions shall be followed in preference to measurement by scale. In the event of discrepancies between Drawings, between Drawings and Specifications or between Specifications, the intent shall be interpreted by the Architect, which shall be binding on the Contractor. Where a dimension may be missing, the Work shall be accomplished in accordance with the directions and dimensions provided by the Architect. Dimensions on Drawings, as well as detail Drawings themselves, are subject in every case to measurements of existing, adjacent, incorporated and completed work which shall be taken by the Contractor before undertaking any work dependent upon such data. Dimensions pertaining to the Work shall be verified at site by Contractor.

§ 1.2.6 Where Specifications are of the abbreviated or “streamlined” type, they shall be construed as complete sentences, as shall notes on the drawings. Omission of Words such as “the”, “the Contractor shall”, and “as shown on the drawings” is intentional. The words “shall” or “shall be” are to be supplied by inference. Imperative or directive instruction, directions or specifications apply and refer to the Contractor. The words “symmetrical” and “similar” are used in the general sense and need not mean “identical”.

§ 1.2.7 Where a number is specified (as for gauges, weights, temperatures, an amount of time, and similar references) and the specified number cannot be obtained, the number shall be interpreted as the next better, as available.

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

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§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, ~~Architect, and the Architect’s consultants.~~

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties ~~will~~ may use AIA Document E203™–2013, Building

Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without written 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 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 Construction Manager and the Architect do 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. Work is to proceed as a no-lien Project in accordance with the laws of the State of Minnesota regarding public projects. The Contractor, for itself and for all who claim through the Contractor, acknowledges and agrees: (i) that because it is a public project, no lien shall attach to the real estate on which the Project is located or to any improvements now existing or to be constructed thereon in favor of the Contractor or any Subcontractor, mechanic, journeyman, laborer, material vendor, lessor of tools or equipment or any other party who may furnish work, materials, equipment, services, tools or machinery for the design or construction of improvements on the land. The Contractor shall also provide written notice of the no-lien status of this Project to all of its Subcontractors, material suppliers, equipment lessors and others that provide labor, material, equipment and/or services for the Project. Contractor shall defend, indemnify and hold the Owner and Construction Manager harmless from any suit, lien, damages, losses or expenses, including reasonable attorney's fees.~~

§ 2.2 ~~Reserved~~Evidence of the Owner's Financial Arrangements

~~§ 2.2.1 Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

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

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

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

§ 2.3 Information and Services Required of the Owner

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

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 2.3.5 ~~Except as otherwise required by the Contract Documents, the~~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.

§ 2.3.6 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.

§ 2.3.7 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.

§ 2.3.8 The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

§ 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 ~~seven ten~~-day period after receipt of notice from the Owner ~~to the Contractor and its surety, if any, -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 ~~or require the Contractor’s surety to assume the obligations of the Contractor.~~ Such action by the Owner and amounts charged to the

Contractor or its surety are both subject to review by the Construction Manager and prior concurrence approval of the Architect, and the Construction Manager or 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 Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor or its surety shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 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 Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor also represents that all Contract Documents for the Project have been examined, including those intended for work of trades not normally performed by the Contractor's own forces, and the Contractor has become thoroughly familiar with all conditions which may pertain to or affect the Work under this Contract.

§ 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 2.3.5, 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 Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions

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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, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager 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 the Project 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, in consultation with the Construction Manager, 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. All work shall be performed in the best and most workmanlike manner to the highest standards for the work. Incompetent or careless workmanship shall not be permitted by the Contractor and will not be accepted.

§ 3.4.4 The Contractor, and all those working under its jurisdiction, shall conform to labor laws of the state and all other laws, ordinances and legal requirements affecting the Work. Prior to starting work, the Contractor shall become familiar with local labor and trade conditions, skilled and unskilled, and shall conform to local conditions. The Contractor shall consider the availability of labor in the area and import labor as may be required to meet the schedule for the Work.

Unless otherwise provided in Contract Documents, all materials, equipment and other products shall be one of the brands, manufacturers or types specified. All like products for the Work shall be by the same manufacturer.

§ 3.4.5 After the Contract has been executed, the Owner and the Architect, after consultation with the Construction Manager, will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the Contract Documents.

§ 3.4.6 By making requests for substitutions based on the preceding subsection, the Contractor:

- .1 Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

- .2 Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 Certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

§ 3.4.7 If the Contract Documents require, or Contractor elects to perform work after regular working hours, those additional costs of such work shall be borne by Contractor. If, however, work after regular hours and/or overtime is necessitated by changes in the Schedule due to forces beyond the control of Contractor (such as material supply chain issues, Owner's timely delivery of the project to the construction team, etc.), then the additional costs of such work may be submitted as a Change Order, the approval of which will not be unreasonably denied by Owner.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, and Architect for a period of one-year after the date of Substantial Completion of the Work or designated portion thereof or after the date of commencement of warranties established under Subparagraph 9.9.1 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 for a period of one-year after the date of Substantial Completion of the Work or designated portion thereof or after the date of commencement of warranties established under Subparagraph 9.9.1 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 Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The quality required under this Warranty shall, as a minimum, equal all standards or requirements of form, function, durability, performance, type, strength, efficiency, service, appearance or other criteria established by the requirements of the Contract Documents.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof 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 Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay 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. The Contractor shall provide and pay for all bonds that may be required to accomplish the Work, including any bonds required by municipalities.

§ 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. In any instance where requirements of the Contract Documents are in excess of, but not in conflict with or violation of requirements of a public authority, the provisions of the Contract Documents shall govern.

§ 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, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, 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, in consultation with the Construction Manager, 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, Construction Manager, and Contractor, stating the reasons. ~~If the Owner or Contractor disputes the Architect's determination or recommendation, either 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, Construction Manager, 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, ~~except where installation is specified as part of the allowance in the Contractor Documents; and~~
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2; ~~and~~
- .4 the supplier or subcontractor for an allowance item is subject to acceptance of the Owner, Architect, and Construction Manager; and the Contractor's Purchase Order or Subcontract Agreement shall bind the supplier or subcontractor to the requirements of the Contract Documents.

§ 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, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager 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, Construction Manager, 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.

§ 3.9.4 The superintendent must provide his or her e-mail address and cell phone number to Owner, Construction Manager and Architect and must be available to be contacted during all business hours and outside of business hours in the event of an emergency.

§ 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, and the Construction Manager's use in developing the Project schedule, 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. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

§ 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 Construction Manager's and Architect's approval. The Architect and Construction Manager'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 Construction Manager and 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 participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the ~~accepted~~approved Shop Drawings, Product Data, Samples, and similar required submittals. The record documents shall be a separate set of documents used only for record purposes and kept clean and undamaged. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager 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 and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are 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 Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and ~~accepted~~~~approved~~approved by the Architect.

§ 3.12.8 The Work shall be in accordance with ~~accepted~~~~approved~~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 Construction Manager and 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 Construction Manager and 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, the Architect, and the Construction Manager 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. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

§ 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 Construction Manager and Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 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.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 3.13.3 The Contractor shall return all improvements on or about the site, streets and adjacent property which are not shown to be altered, removed or otherwise changed, to the conditions which existed previously. The Contractor shall protect existing structures or other features from damage by any operation in connection with the contract.

§ 3.13.4 Utilities or other services which are shown, or not shown but encountered or otherwise found, shall be protected by the Contractor from any damage from excavation or other work and operations of this Contract, unless or until they are abandoned. Contractor shall immediately restore any damage from its work or operations to place the utilities and services in good operating condition. If the utilities or services are shown to be abandoned or moved, they shall remain in service, and be protected by the Contractor, until new utilities and services have been provided, tested and ready for use.

3.13.5 Contractor shall verify with the Construction Manager prior to making deliveries to the site and that the project site is in a condition to receive and store materials. Materials delivered without authorization of the Construction Manager will be removed from the site and stored at the contractor's expense.

§ 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. Cutting and patching shall be kept to an absolute minimum by careful planning and through providing proper holes, sleeves, anchors, inserts or other built-ins as Work progresses and then only to the extent required to properly place, support, hang, anchor or install work. Contractor shall restore the improvements and finishes to like-new condition, to match adjoining work and such restoration shall be performed by workers skilled in the particular type of work involved. Where finishes are patched, they shall be patched to the extent necessary to provide unbroken and unattached appearance and shall be carried to natural break points as necessary. All patching is subject to the Architect's acceptance approval. Unauthorized or careless cutting will not be permitted. No structural member shall be cut in a manner or to an extent which will affect the structural effectiveness, unless approved by the Architect.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

§ 3.14.3 Cutting and patching of construction work or excavation and backfilling in or about the building, shall be done under the general supervision of the Contractor for that phase of the Work being altered, who shall be responsible to see that patching and backfilling is accomplished by using proper labor, materials and methods consistent with the requirements for other similar construction.

§ 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, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, 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, Construction Manager, 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, Architect, or Construction Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and 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.

§ 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.

§ 3.19 EQUAL OPPORTUNITY IN EMPLOYMENT

§ 3.19.1 Contractor shall not discriminate against any employee or applicant for employment because of sex, creed, color, religion, national origin, marital status, status with respect to public assistance, disability, age, or sexual preference. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to the following: employment, upgrading, demotion or transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other form of compensation and selection for training, including apprenticeship. Contractor shall incorporate these same equal opportunity, antidiscrimination and affirmative action requirements into all agreements between Contractor and its Subcontractors.

§ 3.20 VERIFICATION OF FIELD CONDITIONS

§ 3.20.1 The Contractor shall take field measurements and verify field conditions with the Contract Documents and final Shop Drawings before commencing any Work. The Contractor shall promptly report errors, inconsistencies or omissions to the Architect and Construction Manager.

§ 3.20.2 No change in the Contract Sum will be allowed on account of minor differences between actual field conditions and the Contract Documents.

§ 3.21 MISCELLANEOUS CONTRACTOR RESPONSIBILITIES

§ 3.21.1 The Contractor agrees to adequately and properly protect its Work. The Contractor agrees to adhere to the Federal Occupational Safety & Health Act, state and local safety regulations, so as to avoid injury or damage to persons or property resulting from failure to do so.

§ 3.21.2 In the event the Contractor, after 24 hour written notice from the Construction Manager fails to take corrective action to ensure compliance with said safety regulations, the Construction Manager may, but shall not be obligated to, remedy the situation according to OSHA standards and charge the cost of same to the Contractor's account without further notice to the Contractor.

§ 3.21.3 The Contractor agrees to notify the Construction Manager's representative on the job site of all accidents which may occur to persons or property and shall provide the Construction Manager's representative with a copy of all accident reports on appropriate forms. All reports shall be signed by the Contractor or his authorized representative and submitted within twenty-four (24) hours of occurrence.

§ 3.21.4 The Contractor agrees that all disputes concerning the jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the work is being done. The Contractor shall be bound by, and shall abide by, all such adjustments and settlements of jurisdictional disputes, whether or not the Contractor is signature bound by the agreement establishing the Impartial Jurisdictional Disputes Board and/or its successors. The Contractor agrees not to cause a work stoppage due to the jurisdictional assignment of work.

§ 3.21.5 The Contractor shall submit to the Construction Manager upon request, copies of orders placed for the various materials required for the Project or stock lists if such material is normally a stock item. Order copies need not reflect prices but should indicate, among other things, type of material, quantity, and vendor name, and address. The Contractor shall be required to submit to the Construction Manager a monthly Material Status report, or more often if required by the Construction Manager, as a prerequisite for the monthly progress payment. The Contractor shall notify the Construction Manager immediately upon learning of a change of status of any material, equipment or supplies.

§ 3.21.6 The Contractor agrees to maintain an adequate force of experienced workers and the necessary materials, supplies, and equipment to meet the requirements of the Construction Manager and other trades in order to maintain construction progress schedules, as established by the Construction Manager and Owner. In the event that Contractor's forces are, in the judgment of the Construction Manager, inadequate to meet the established schedules during the regular working hours, the Contractors agree to work sufficient overtime hours or increase its work force to meet such schedules at no extra cost to the Construction Manager, Architect, or the Owner.

§ 3.21.7 The Contractor agrees to employ competent administrative, supervisory, and field personnel to accomplish the work, including layout, engineering, preparation and checking of shop drawings. Such supervisory personnel shall not be changed without written consent of the Construction Manager.

§ 3.21.8 The Contractor shall insure that all construction tools, equipment, temporary facilities, and other items used in accomplishing the Work, whether purchased, rented or otherwise provided by the Contractor or provided by the others, are in a safe, sound, and good condition; capable of performing the function for which they are intended and maintained in conformance with applicable laws and regulations.

§ 3.21.9 In no event shall any act or omission on the part of the Owner, the Architect or the Construction Manager relieve the Contractor from its obligation to perform its Work in full compliance with the Contract.

§ 3.21.10 The Contractor shall be responsible to the Owner and Construction Manager for the acts and omissions of all of its employees and all of its subcontractors, their agents and employees, and all other persons performing any of the Contractor's Work.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 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. The term Architect means the Architect or his authorized representative, including employees or consultants. Where "Architect" may be used relating to engineering phases of the Work, substitute the term "Engineer" therefore.

§ 4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative, including employees or consultants.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and 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. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and 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, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 Communications. The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager 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 Construction Manager 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 other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 The Construction Manager will receive and promptly review for general conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval acceptance. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.11 The Architect will review and acceptapprove, 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. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect 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 Construction Manager and 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 Construction Manager and 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.

§ 4.2.13 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.14 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during

construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.17 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 Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.18 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.19 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 so rendered in good faith.

§ 4.2.20 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request 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, firm or entity who has a direct contract or purchase order with the Contractor to perform a portion of the Work at the site provide or furnish materials, equipment, facilities, labor or services, or a combination of these, for the execution and completion of the Work or part thereof. 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 other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity ~~who has having~~ a direct or indirect contract or purchase order with a Subcontractor to perform a portion of the Work at the site provide or furnish materials, equipment, facilities, labor or services, or a combination of these, for the execution and completion of the Work or part thereof. 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 Construction Manager, for review by the Owner, Construction Manager 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, along with a list of the actual materials or equipment such person will be furnishing. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed

person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager 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, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager 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. No increase in the Contract Sum shall be allowed should a substitution be required as a result of the Owner's or Architect's reasonable objection based on specified criteria on which a proposed subcontractor will be evaluated.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager 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, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

§ 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 with Own Forces and to Award Other Contracts

§ 6.1.1 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 the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

§ 6.1.3 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 ~~and Subcontractors shall cooperate with and coordinate their work with all other Contractors and the Owner to facilitate the general progress of the Project and to prevent delaying the progress of other Contractors. The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance the execution of their activities work, and shall connect and coordinate the Contractor's construction and operations Work with theirs as required by the Contract Documents. Each Contractor and Subcontractor shall obtain layout drawings, roughing-in detail sheets and other pertinent information directly from each other (not from Architect or Construction Manager) to coordinate all phases of the Work. For coordination with the Owner's equipment or materials, information shall be obtained from the Owner through the Construction Manager. After timely notification by the Contractor of the need to accomplish a particular phase or element of the Work, the other Contractors shall, within a reasonable time, perform their work so as not to delay or impede the Contractor.~~

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities, ~~lack of coordination with other Contractors~~ or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.

§ 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, Separate Contractors, or other Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner, Separate Contractors, and other Contractors 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, other 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 Construction Manager, with notice to 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, 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, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager 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.

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

§ 7.1.4 For proposed changes in the Work the costs shall be determined as provided under this Subsection 7.1.4. The Contractor shall submit an itemized list of quantities with the applicable unit costs and extended price for each, in such form and detail as required by the Construction Manager/Architect.

.1 As a minimum, the detailed breakdown shall include and indicate the items enumerated below. Items (a) and (b) constitute the cost of labor, and items (a), (b), (c) and (d) constitute the basic costs referred to under this Article 7.

(a) Labor costs, itemized by each trade involved, showing the hourly rates for each, and the hours required for the change. Labor rates shall be the same for extra and credit computations and shall be the actual rate paid workmen in accordance with established management labor agreement.

(b) Burden on labor, which shall be only the actual costs of mandatory fringe benefits required by established agreements, taxes on labor, worker's or workmen's compensation, insurance on labor as affected by payroll, unemployment taxes and insurance, including FICA and FUTA.

(c) Quantities of materials, equipment and supplies, at their actual cost, with unit costs indicated.

(d) The cost of subcontracted work, computed in the same way as provided for under this Subsection 7.1.4.

(e) Overhead, profit or commission.

(f) Applicable sales tax on materials, added after the above computations are complete.

.2 The maximum that will be allowed for overhead and profit, or commission, shall be as follows, expressed as a percentage of the basic cost of the change. The maximum allowable percentages for profit, overhead and commission may be less, depending on the nature, extent or complexity of the change, where the percentage is not commensurate with the responsibility and administration involved (such as the Contractor merely processing a substantial Change Order to a Subcontractor) but in no event shall they exceed the following:

	Overhead/Profit	Commission
<u>(a) To the Contractor and/or Subcontractor for work performed with their own forces.</u>	10%	
<u>(b) To the Contractor for work performed by other than its own forces.</u>	--	5%

.3 Not more than two percentages for overhead, profit and commission will be allowed. The mark-up on any part of the Work a Subcontractor subcontracts will be limited to one overhead/profit figure in addition to the Contractor's commission, the Subcontractor and Sub-Subcontractor may divide the overhead and profit amount as they agree upon.

.4 The burden on labor may be indicated as a dollar/cents addition to the hourly rate or may be expressed as a percentage of the extended hourly rate costs. If required by the Owner, Construction Manager or the Architect, the Contractor shall provide a detailed breakdown to justify the labor burden. The Construction Manager reserves the right to reject any labor burden which is inconsistent with other similar contractors or where the cost of fringe benefits are in excess of established labor agreements. The burden on labor shall not include any costs noted as general overhead.

.5 Material, equipment and supply costs shall be quoted at the actual cost to the Contractor, or Subcontractor. Upon request, the Contractor (or Subcontractor) shall submit evidence to substantiate the costs. Said costs shall be quoted at trade discount prices, with quantity discounts also applied

where the quantities warrant. Cash or prompt payment discounts need not be credited. In any proposal with material, equipment and supply credits, the credit shall be based on the actual Contract cost of the material (including trade and quantity discounts) less any charges actually incurred for handling or returning a material which has been delivered. No cancellation, restocking or similar charge will be allowed unless actually incurred by the purchaser and generally will not be allowed when the product has not been shipped.

- .6 The percentages allowed for overhead, profit or commission under clause 7.1.4.2 shall be deemed to include, and no further addition allowed for: (1) field and office supervision and administration, including the field superintendent and foremen; (2) general insurance, except that listed as the labor burden; (3) use or replacement of tools; (4) shop burden; (5) equipment rental (other than specifically required additional hoisting equipment, required excavating equipment or similar equipment necessary solely as a result of the change); (6) engineering and estimating costs; (7) performance and payment (guaranty) bond; (8) cost of safety measures (including those imposed by OSHA); (9) shipping, drayage and demurrage; (10) parking charges; (11) clean up and debris removal; (12) testing; (13) permits, unless a new permit type is required; (14) or any other costs except those enumerated under clause 7.1.4.
- .7 Cost changes shall be computed by determining the basic costs enumerated under clause 7.1.4 (as further specified under this subsection), to which the overhead may be added, then the profit figure may be added and finally adding the sales tax on materials.
- .8 Subcontractors (or Sub-Subcontractors) shall compute their costs in the same way and are subject to the same conditions of what may be included in the cost and the same maximum percentages for overhead and profit. To the Subcontractor's price, the Contractor may add up to 5% commission.
- .9 For changes involving work of the Contractor with its own forces and work by a Subcontractor (or Sub-Subcontractor), the commission shall be applied directly to the Subcontractor's price, with the overhead and profit figure applied only to the Work the Contractor performs with its own forces.
- .10 For changes involving both extra and credit amounts, the overhead and profit, or commission, shall be applied only to net difference where the extra exceeds the credit.
- .11 For changes resulting in a credit in the basic costs, a reasonable allowance for overhead, profit or commission may be required to be credited to the Owner, as approved by the Architect after consultation with the Construction Manager. In general, no credit for overhead, profit or commission will be required where the net change credit is minor or where the change in Work indicates it is reasonable that no credit be allowed to the Owner due to the effort, cost or responsibility of the Contractor. In the event of substantial subcontract credits, or for Work not performed by the Contractor, a reasonable overhead, profit or commission credit shall be allowed to the Owner.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Change Proposals. The Contractor must submit change proposals covering a contemplated Change Order within a reasonable time after request of the Owner, Construction Manager or the Architect or within a reasonable time after the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract time will be allowed for the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time, any proposed adjustment must include detailed documentation including but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus the Contractor's Fee.

§ 7.2.3 If the Owner determines that a change proposal is appropriate, the Architect will prepare and submit a request for a Change Order providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No Change Order is effective until the Owner, Contractor and Architect sign the Change Order.

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§ 7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.3 Construction Change Directives

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager 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 Construction Manager 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 Construction Manager and Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager 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 Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The 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 Construction Manager and 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 Construction Manager shall 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 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 Construction Manager 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 Construction Manager 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. The Architect shall also have the right to make minor changes in dimensions, locations, arrangements or details to accommodate changes in other materials and equipment, improve the Work, or prevent unforeseen interference with structural or other features. Such changes shall be made without a change in the Contract Sum.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Final Completion within the Contract Time. The Work shall not be suspended or shut down, but shall progress continuously with sufficient labor at all times, unless otherwise approved by the Owner, Architect and Construction Manager.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (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 other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

§ 8.3.3 This Section 8.3 does not preclude the Owner's recovery of damages for delay by either party under other provisions of the Contract Documents. To the fullest extent allowed by applicable law, the Contractor's sole and exclusive remedy for delay is a right to a time extension for completion of the Contract and not damages.

8.3.4 Contractor shall be responsible for damages incurred by Owner/Architect or Construction Manager and any other separate Contractors for delay resulting from Contractor's failure to complete Work, including final punch list and project closeout documents within Contract Time, or resulting from progress of Work failing to conform to Construction Manager's progress schedule.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment and in accordance with other requirements of the Contract Documents, 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 Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or 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 fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager 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, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents of percent. Substantiating documents may, at Owner's option, include waivers of liens from Contractor, subcontractors, and Suppliers.

§ 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 Construction Manager and Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. Minn. Stat. § 290.92 requires that the Owner obtain a Withholding Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by the Contractor to the Minnesota Department of Revenue for approval. The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid.

9.3.1.3 Pay requests received after the date established in the Contract Documents will not be processed until next pay period.

9.3.1.4 The schedule for application for payment and date of payment will be set by Construction Manager after consultation with the Owner.

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

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

§ 9.3.4 The Contractor shall submit its Application for Payment on forms as the Construction Manager or Architect may specify or direct. The Application shall be accompanied by a sworn, notarized Certificate by the Contractor, attesting to the accuracy of the amount as being for work satisfactorily complete in accordance with the Contract Documents, and that all just claims and bills for labor, materials, equipment, subcontracts and services or other expenses represented in previous Applications for Payment have been paid, such that the Contractor is entitled to the payment.

§ 9.3.5 PROMPT PAYMENT TO SUBCONTRACTORS. In accordance with Minnesota law, the Contractor shall include, in all subcontracts and other agreements with its subcontractors and suppliers, a provision which requires the Contractor to pay any of its subcontractors and suppliers within 10 days of the Contractor's receipt of payment from the Owner, for undisputed services or supplies provided by the subcontractor or supplier. The provision shall also include the requirement that the Contractor shall pay interest of one and one-half percent (1.5%) per month or any part of a month to the subcontractor or supplier on any undisputed amount not paid on time to the subcontractor or supplier. The provision shall further provide that the minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10; for an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the subcontractor or supplier; and a subcontractor or supplier who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorneys' fees, incurred in bringing the action.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager 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 Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is

due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager 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 Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager'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, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation 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, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 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 Construction Manager or Architect.

§ 9.4.6 The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or 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 Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to ~~certify payment~~ [issue a Certificate of Payment](#) in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or 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 or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the 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 or other Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 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 or Construction Manager withholds certification for payment under Section 9.5.1, 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 Construction Manager, and both will reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project 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 Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Prompt Payment to Subcontractors: the Contractor and all Subcontractors shall comply with the applicable requirements of the Prompt Payment of Local Government Bills, Minnesota Statutes, Section 471.425 ("Prompt Payment Act") which states that the prime contractor must pay any subcontractor within ten days of the prime contractor's receipt of payment from the Public Body/Owner for undisputed services provided by the subcontractor. The prime contractor must pay the subcontractor interest on any undisputed amounts not paid on time as provided in Section 471.425. The Contractor shall include this requirement in all subcontracts and other agreements with its subcontractors and suppliers.

§ 9.6.3 The Construction Manager 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 Owner, Construction Manager and Architect 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, Construction Manager 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 Issuance of a Contractor's Application and Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute an acceptance of any Work not in accordance with the Contract Documents. The Contractor and its Surety agree any issuance of a Contractor's Application and Certificate for Payment by the Architect, payment on the Contract Sum or in reducing any retaining amount, or any use or occupancy of the Work will in no way relieve them of the obligation to completely fulfill or accomplish all obligations of the Contract, including warranty of the Work, and that they waive any actual or alleged rights of subrogation or action against the Owner or the Architect as a result of any such issuance of a Contractor's Application and Certificate for Payment, payment, or use or occupancy. At any time, the Surety shall have the right

to examine the status of the Work, as well as any payments, and may request the Owner to withhold additional sums as it considers appropriate to protect its interests.

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

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

§ 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's 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 Construction Manager and Architect ~~or awarded by binding dispute resolution~~, then the Contractor may, upon seven additional days' ~~written~~ notice to the Owner, Construction Manager 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 the Owner can occupy or utilize the Work for its intended use.

§ 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 notify the Construction Manager, and the Contractor and Construction Manager shall jointly 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 list, the Architect, assisted by the Construction Manager, 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 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, assisted by the Construction Manager, to determine Substantial Completion. The payment shall be sufficient to increase the total payments to ninety-five (95%) percent of the contract sum, less such amounts as the Construction Manager and Architect shall determine for incomplete work and unsettled claim.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the

date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 After Substantial Completion, the Contractor shall coordinate his activities with the Owner's use of the substantially completed work and shall diligently complete the remaining work, without delay or interruption, within the remaining Contract Time.

§ 9.9 Partial Occupancy or Use

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

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their 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 Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager such substantiation of the Contractor's right to payment as the Owner may require, such as and including: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the

Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and ~~certification recommendation~~ by the Construction Manager and 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 through the Construction Manager 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. Notwithstanding the foregoing, the Owner may at its option retain a minimum of three times the value of the incomplete or uncorrected parts of the Work, or the minimum amount allowed by applicable law, as estimated by the Construction Manager, provided the remaining work is minor and cannot be completed or corrected due to weather, unsuitable conditions for testing or other circumstances beyond the Contractor's control, as agreed upon by the Architect and Construction Manager.

~~§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~
~~.1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~
~~.2 — failure of the Work to comply with the requirements of the Contract Documents;~~
~~.3 — terms of special warranties required by the Contract Documents; or~~
~~.4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~

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

§ 9.10.6 Final payment to the Contractor will be withheld until the Contractor has furnished the Owner a Withholding Affidavit for Contractors, Form IC-134. This form must be submitted by the Contractor to the Minnesota Department of Revenue for approval. The form is used to receive certification from the state that the Contractor vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. Contractor and Owner acknowledge and agree that nothing in this Article 10 is intended to limit or otherwise reduce the safety responsibilities of the Subcontractors. Contractor and Owner further agree that Contractor's Subcontractors are independent contractors and that the Subcontractors and the Subcontractors' employees are not the employees of Owner, Construction Manager or Contractor.

§ 10.1.2 In addition to the Contractor's responsibilities referenced in this Article 10, the Contractor shall, at a minimum, comply with the requirements of the Owner's Site Specific Safety Plan, as the same may be amended from time to time (the "SSSP"), which SSSP the Contractor hereby acknowledges has been made available to the Contractor for the Contractor's review, including, without limitation, the following general safety rules:

- .1 The Contractor shall actively promote safe working performance on the part of its employees. The Contractor's site supervisors shall participate in such activities as regular safety meetings, safety inspections, and other safety programs. The Contractor will also conduct its own safety programs best suited to its particular needs;
- .2 The Contractor shall hold no less than weekly safety meetings with its construction workers. Minutes of these meetings shall be forwarded promptly to the Construction Manager;
- .3 The Contractor shall implement and practice an effective system of indoctrination and education of new and transferred employees to the Project. The Contractor shall inform its employees of all safety rules and safety procedures before the employee begins work on the Project. A suggested system such as review of local regulations and the SSSP should be used as a guide;
- .4 The Contractor shall inform its employees of the location and use of emergency equipment;
- .5 The Contractor shall inform its employees of existing Project procedures for first aid and ambulance calls;
- .6 The Contractor shall use its own regular system of inspection to promptly detect and correct hazardous conditions, safety rule violations and unsafe working practices in its own areas. The Contractor's safety inspection audit will include the Contractor areas and will be reviewed by the Contractor with the Construction Manager;
- .7 Good housekeeping and orderliness are basic requirements for all jobs and must be maintained at all times. Special attention must be given to maintaining clear walkways, removal of trash, removal of slipping and tripping hazards, and proper storage of materials. Materials shall not be left in aisles, walkways, stairways or other points of ingress or egress. Temporary material storage areas must always be requested and cleared through the Construction Manager and kept neat;
- .8 The Contractor's site supervisor shall give his or her current address and telephone number to the Construction Manager so that he or she is available to be contacted after hours in case of emergency involving hazard, loss, or damage; and
- .9 The Contractor shall ensure that all of its employees are equipped with all personal protection equipment as required by local laws, regulations, codes and/or by the SSSP.

In the event of any conflict, inconsistency or uncertainty between the SSSP and the Contract Documents, or between the SSSP and any applicable law, statute, ordinance, code, rule, regulation or lawful order of a public authority, the greater, more detailed or more stringent requirement shall control.

§ 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;
- .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; and
- .4 construction or operations by the Owner, Separate Contractors, or other Contractors.

§ 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 and shall give the Owner and Construction Manager reasonable written advance notice.

§ 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, 10.2.1.3 and 10.2.1.4 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, 10.2.1.3 and 10.2.1.4. 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, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault, [acts, operations, methods](#), 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, Construction Manager 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 [it or any adjacent property](#) or create an unsafe condition.

§ 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.

[§ 10.2.9 The Contractor shall indemnify, defend and hold harmless the Owner and Construction Manager from and against any and all liability, fines, penalties, costs and expenses, including, but not limited to reasonable attorneys' fees, caused by or resulting from the Contractor's breach of any of its obligations under Sections 10.1 and 10.2 herein.](#)

§ 10.3 Hazardous Materials

§ 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, Construction Manager 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, Construction Manager 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, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager 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, Construction Manager, Architect, their 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 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 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.

§ 10.5 MISCELLANEOUS GENERAL PROVISIONS

§ 10.5.1 The requirements under 10.4, Miscellaneous General Provisions, shall be considered as minimum requirements and shall not be construed to limit the amount of protection required to safeguard all persons and property, nor construed as directing or establishing the Contractor's methods or responsibilities.

§ 10.5.2 The Construction Manager shall provide and maintain adequate fire extinguishers in and around the construction area, available to all workers, but the Contractor shall not use extinguishers that are to be installed in the Work.

§ 10.5.3 The Contractor shall provide and maintain guard lights at barricades, railings, obstructions in streets, roads or sidewalks and at trenches or pits including at those adjacent to existing buildings, public roads, walks, and similar locations where a hazard may exist. The Contractor shall provide and maintain suitable barricades or fences around excavations, including trench excavations, excavated by Contractor or Subcontractors.

§ 10.5.4 As may be applicable to the Project and to the Work, the Contractor shall provide and be responsible for: protection of equipment, materials, supplies and Work to prevent any damage, including from freezing, thermal shock, heat, water, and other damaging elements; providing proper and adequate drainage (temporary and permanent) of the site in connection with work of this Contract; damage to property as a result of work or operations under this Contract, including but not restricted to damage from water, excavation, underpinning, removal or changing or structural supports; collapse or other failure to the Project resulting from the Contractor's acts, operations or work, including water undermining or creating pressure on the construction; pumping of water from work areas and excavations of this Contract, and spaces built, constructed or opened up under the Contract, and if necessary, installing temporary heat to keep the spaces dry; providing protection and planking on finished floors and other finished surfaces where work is being done by the Contractor or Subcontractors; closing and protecting all holes or openings through walls, floors and roofs that are cut or built by the Contractor or Subcontractors; and which will admit water to interior spaces during the construction period or will create a potential safety hazard; removal of snow to accomplish the Work; keeping premises in neat and orderly condition; eliminating fire hazards.

§ 10.5.5 As may be applicable to the Project and to its Work, the Contractor shall be responsible for the following: providing safe and adequate stairways (temporary and permanent) for the use of all trades; maintaining access to the site; proper protection by heating of an enclosed building during cold weather; protection for trees and other similar features, which are to remain, from damage from operations in connection with the Project, by boxing tree trunks and setting up barricades at sufficient distance to prevent damage to branches; the removal of accumulated snow and ice within a building, which generally shall be hauled out (not melted), unless it is a minor amount, as approved by Architect/Construction Manager.

§ 10.5.6 The Contractor and each of its Subcontractors shall provide storage and enclosures to protect and preserve the materials stored at and off the site. Materials such as wood, metal, cement, masonry materials, equipment of any type, conduit and similar materials, shall not be set directly on ground. Coverings shall be durable, watertight, fully cover sides as well as top, substantial and well anchored to prevent blowing away. Shed type enclosures shall be provided for easily damaged and small items. Any protection which becomes damaged shall be replaced immediately at the Contractor's sole cost and expense. Contractor's storage shall be reviewed and must be acceptable to the Construction Manager, as it relates to site coordination.

ARTICLE 11 INSURANCE AND BONDS

~~§ 11.1 Contractor's Insurance and Bonds~~

~~§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.~~

~~§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~

~~§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~

§ 11.1 Contractor's Liability Insurance

§ 11.1.1 The Contractor shall purchase and maintain commercial general liability insurance as required to protect the Contractor, Construction Manager, Architect and Owner from claims set forth below which may arise out of, result from, or are in any manner connected with, the execution of the Work provided for in this Contract, or occur or result from the use by Contractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Construction Manager, Contractor, or third parties, whether such claims arise during Contract performance or subsequent to completion of operations under this Contract and whether operations be by the Contractor or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable, and whether such claims are claims for which the Contractor may be, or may be claimed to be, liable. Such insurance shall include, without limitation, coverage and endorsements as will insure the Contractor's obligations under the provisions of Subsection 3.18 herein. Insurance shall be purchased from a company licensed to do business in the state where the Project is located, and shall be written for not less than the limits of liability specified below or required by law, whichever is greater. The types of claims, required coverages and minimum limits of liability are as follows:

§ 11.1.1.1 Claims under Worker's Compensation, disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease or death of employees. Insurance coverages shall include Statutory Workers' Compensation, including Employer's Liability with a minimum limit of \$100,000.00 for each employee.

§ 11.1.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death, by any person other than employees; claims for personal injuries which are sustained (1) by any person as a result of an act or omission directly or indirectly related to the employment of such person by the Contractor, or (2) any other person; claims for damages other than to the Work itself, because of injury to or destruction of tangible property including loss of use resulting therefrom. Insurance coverages shall include:

- .1 Premise-Operations
- .2 Products-Completed Operations
- .3 Blanket Contractual – Such insurance and endorsements as will insure the obligations under the provisions of Subsection 3.18 of this Document.
- .4 Broad Form Property Damage
- .5 Personal Injury

.6	Blanket Explosion, Collapse and Underground Property Damage	
.7	Operations of Independent Contractors	
.8	Policy Limits:	
	General Aggregate	\$2,000,000.00
	Products/Completed Operations Aggregate	\$2,000,000.00
	Personal Injury	\$2,000,000.00
	Each Occurrence	\$2,000,000.00

§ 11.1.1.3 Claims for damages because of bodily injury or death of any person, or any property damage, arising out of the ownership or use of any motor vehicle. Insurance coverage shall include:

.1	Business Auto Liability insurance including owned, hired and non-owned vehicles with limits of \$1,000,000.00
.2	Combined Single Limit for each accident for bodily injury and death, or property damage.

§ 11.1.1.4 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

§ 11.1.1.5 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than \$1,000,000 per claim and (\$1,000,000 in the aggregate.

§ 11.1.1.6 If the Work involves the transport, dissemination, use, or release of pollutants or hazardous materials, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than \$1,000,000 per claim and \$1,000,000 in the aggregate.

§ 11.1.1.7 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than \$1,000,000 per claim and \$1,000,000 in the aggregate.

§ 11.1.1.8 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than \$3,000,000 per claim and \$3,000,000 in the aggregate.

§ 11.1.1.9 The limits of liability specified in Section 11.1.1 shall be considered minimum requirements. The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under subsections (B) and (C) above, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 11.1.1.10 All aforesaid insurance policies shall be underwritten with responsible insurance carriers, with Best's Ratings of not less than A and X and otherwise satisfactory to Construction Manager and Owner and licensed to provide insurance in the state in which the Project is located. Non-admitted carriers may be considered on an individual basis. Approval of the insurance by the Construction Manager or Owner shall not relieve or decrease the liability of the Contractor. The Construction Manager, Architect and Owner do not in any way represent that the insurance or limits of insurance specified in this Section 11.1.1 are sufficient or adequate to protect the Contractor's interests or liabilities, but are minimums. The Contractor is responsible, at Contractor's expense and not a reimbursable expense, for providing any additional insurance Contractor deems necessary to protect Contractor's interest from other hazards or claims in excess of the aforementioned minimum insurance coverages.

§ 11.1.1.11 The Construction Manager and Architect are intended third-party beneficiaries of the Contractor's obligations in this Section 11.1.

§ 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. Coverages, whether written on an occurrence or claims-made 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 statute of repose

applicable to such completed operations claims or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article 11 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section 11.1.2. The certificates will show the Owner, Architect and Construction Manager as additional insureds on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, 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.

§ 11.1.5 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability and umbrella excess liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner and the Construction Manager and the Construction Manager's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory and without recourse to or contribution from any similar insurance carried by such additional insureds and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. The Additional Insured status must be reflected on the Contractor's Certificate of Insurance to Construction Manager and Owner. The Contractor shall provide Owner and Construction Manager with a copy of Contractor's Commercial General Liability Insurance policy or such Additional Insured endorsement to confirm Contractor's compliance with this section.

§ 11.1.6 The Contractor agrees to assume entire responsibility and liability, to the fullest extent permitted by law, for all damages or injury to all persons, whether employees or otherwise, and to all property, arising out of, resulting from, or in any manner connected with, the execution of the Work provided for in this Contract or occurring or resulting from the use by the Contractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Construction Manager, the Contractor, or third parties. Further, the Contractor, to the fullest extent permitted by law, agrees to indemnify and save harmless the Construction Manager, the Architect, the Owner, and their agents and employees from all such claims including, without limiting the generality of the foregoing, claims for which the Contractor may be, or may be claimed to be, liable and legal fees and disbursements paid or incurred to enforce the provisions of this Subsection. The Contractor further agrees to obtain, maintain and pay for such Commercial General Liability insurance coverage and endorsements as will insure the provisions of this Subsection.

§ 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 this Section 11.2, the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the

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Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

§ 11.2.4 Property Insurance

§ 11.2.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.2.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.2.4.2 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss.

§ 11.2.4.3 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.2.4.4 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.2.4.5 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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§ 11.2.4.6 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of 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 Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) 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 ~~Section 11.2~~the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, 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.

§ 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, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

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

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

§ 11.6 Performance Bond and Payment Bond

§ 11.6.1 The Owner shall have the right to require the Contractor to shall furnish bonds as described below covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract (the "Bonds") prior to commencement of Work under the Contract).

§ 11.6.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment obligations arising under the Contract, the Contractor shall furnish a copy of the Bond or shall authorize a copy to be furnished. The Bonds shall be issued by a corporate surety company authorized to do business in the state in which the Project is located and the surety company shall be subject to the Owner's approval. Fully executed copies of the Bonds shall be provided to the Owner, Construction Manager and Architect.

§ 11.6.3 The minimum requirement for the Owner's approval of the Surety shall be that the Surety is listed by the United States Treasury Department as acceptable for bonding federal projects and that the bond amount is within the limit set by the Treasury Department as the net limit on any single risk. There shall be no affiliation between the Contractor and the Surety Company, Agent or Agency. Duly executed, notarized and updated Acknowledgements of both the Principal and Surety and the Surety's Power of Attorney must be attached to each of the two required bonds.

§ 11.6.4 For public work or other projects subject to statutory bond requirements, the bond form shall be the two-part AIA Form A312 Performance Bond and Payment Bond, 1984 edition, and both parts shall comply with the statutory bond requirements of the state in which the Project is located.

§ 11.6.5 The Bonds shall be in the amount of 100% of the full Contract Sum. When two part bonds are provided, the Bond shall be provided with 100% of the Contract Sum for the Performance Bond and 100% of the Contract Sum for the Payment Bond.

§ 11.6.6 The Bonds shall guarantee the Contractor will perform each and every part of the Contract, cover all guarantees called for and insure prompt payment to all persons furnishing material or labor required in prosecution of the Work under the Contract. In the event of additions to the Contract, the Owner reserves the right to require evidence of additional bonding.

§ 11.6.7 The Bonds shall provide: (1) for additions or deductions from the Work in any amount; (2) that completion time shall not be extended by reason of changes in the Work, unless agreed to at time of change; (3) that no notice of aforesaid alterations, additions, or omissions need to be given the Surety; and (4) permit occupancy by the Owner at any time.

§ 11.6.8 Final acceptance of the Work shall not relieve the Contractor nor Surety from their obligations under this Contract, including warranties of materials, equipment, installation or service.

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 Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract Time. The Contractor shall give timely notice to the Architect, through the Construction Manager, of the readiness of the work to be observed.

§ 12.1.2 If a portion of the Work has been covered which the Contract Documents require be observed before it is covered or that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or 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 Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed, unless the Owner elects to accept the Work as provided under Section 12.3. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. Work rejected before final completion shall be corrected prior to the processing of the final Contractor's Application and Certificate for Payment.

§ 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, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5. The expiration of the above one year or any other specified time period, or any other period prescribed by law, shall not relieve the Contractor of the obligation for the expense to correct any latent defect in the Work or deficiencies which are not readily ascertained, including but not limited to defective materials and workmanship, defects attributable to material substitutions for specified materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Subsection 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in corrected or replaced materials and workmanship, which is found within one year after the date of correction or replacement.

§ 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, Separate Contractors, or other 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.

§ 12.2.6 For the purpose of the commencement of the specified periods covered by this Article 12, or any other special specified period, the date of the inspection for Substantial Completion of the last unit, part or phase of the Work shall be the starting date of the period, for all of the Work, except for any work noted as incomplete or unsatisfactory at that time. The period covered by this article for said incomplete or unsatisfactory work shall start on the date of specifically noted dates of inspection for Substantial Completion, (or of acceptance, in writing, by the Owner of corrected Work), the date of the Architect's issuance of the final Certificate and Application for Payment on the entire Contract will be the start of the period.

§ 12.2.7 Neither the final Certificate of Payment nor any provision in Contract Documents shall relieve Contractor of responsibility for negligence or for faulty materials or work within the extent and period provided by law. Upon written notice, Contractor shall remedy any defect due thereto and pay all expenses for any other work resulting therefrom.

§ 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 of the State of Minnesota. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Construction Manager, 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 Construction Manager and 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 Construction Manager and Architect of when and where tests and

inspections are to be made so that the Construction Manager and 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 Construction Manager's and 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 Construction Manager for transmittal to the Architect.

§ 13.4.5 If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or 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 EQUAL OPPORTUNITY

§ 13.6.1 The Contractor shall maintain policies of employment as follows:

§ 13.6.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

§ 13.6.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

§ 13.7 NON-MINNESOTA CONTRACTOR

Non-Minnesota Contractors for contracts that exceed or can reasonably be expected to exceed \$100,000 shall comply with the following Minnesota Department of Revenue Requirements (MN Law, MS 290.9705):

§ 13.7.1 File form SDE (Exemption from Surety Deposits for Non-Minnesota Contractors) with the Minnesota Revenue, Mail Station 6501, St. Paul, Minnesota 55146-6501. An exemption will be granted if:

- .1 The Contractor provides a cash surety or bond (8% of total contract), secured by an Insurance Company licensed in Minnesota, which guarantees compliance with all provisions of Minnesota withholding, sales and corporate income tax laws, or;
- .2 The Contractor provides evidence of full compliance with such laws on previous construction work in Minnesota during the last three years.

§ 13.7.2 Submit a copy of form SDE, certified by the Department of Revenue, with the Contractor's initial Application for Payment.

§ 13.7.3 If an exemption is not granted, 8 percent of each Application for Payment will be withheld as surety and deposited with the Department of Revenue, to be refunded with interest after the Contractor's State tax obligations are fulfilled.

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 Construction Manager has not certified or 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, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- ~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager 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, including reasonable overhead and profit for the completed Work.~~

§ 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 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, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~after consultation~~ with the ~~advice of the Architect and~~ Construction Manager, ~~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~~ three (3) days' notice, terminate ~~the~~ employment of the Contractor and may, ~~subject to any prior rights of the surety~~:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 ~~Accept assignment of subcontracts pursuant to Section 5.4;~~ and may
- .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; ~~and/or~~
- .4 Accept assignment of subcontracts pursuant to Section 5.4.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor ~~and/or the Contractor's Surety~~ shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the ~~Owner completes the Work and the~~ unpaid balance of the Contract Sum exceeds ~~the~~ costs of finishing the Work, including ~~the Owner's additional costs, attorney's fees and~~ compensation for the Construction Manager's and Architect's ~~additional 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 for the Owner to complete the Work exceed such~~ unpaid balance, the Contractor ~~and/or its Surety~~ shall pay the difference to the Owner. The amount to be paid to the Contractor or ~~to the~~ Owner, as the case may be, shall, ~~upon application,~~ be certified by the ~~Owner or Contractor and approved by the~~ Initial Decision Maker after consultation with the Construction Manager, 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 the 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 this 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 ~~and, if required by the Owner, participate in an inspection of the Work with the Owner and the Architect/Engineer to record the extent of completion thereof, and to identify the Work remaining to be completed or corrected;~~
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of ~~any stored materials and equipment and the completed~~ Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; ~~costs for proven out-of-pocket loss with respect to materials, equipment, tools, and construction equipment and machinery~~ incurred by reason of the termination, ~~but excluding any fee or profit on any unperformed Work including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~

~~§ 14.4.4 The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.~~

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and 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 by notice 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 and the Owner shall continue to make payments in accordance with the Contract Documents.

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

§ 15.1.5 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, ~~written~~ notice as provided ~~in Section 15.1.3 herein~~ shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

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

§ 15.1.7 Waiver of Claims for Consequential Damages. The Contractor ~~and Owner~~ waives Claims against ~~each the Owner 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~~ Owner's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, 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 ~~Reserved. 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 of receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

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

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

§ 15.3 Reserved. Mediation

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

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

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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§ 15.4 Reserved. 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.

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§ 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).

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§ 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.

§ 15.5 Litigation

§ 15.5.1 All Claims shall be subject to litigation in a court of competent jurisdiction as set forth in the Agreement.

ARTICLE 16 ADDITIONAL CONDITIONS

§ 16.1 ADDITIONAL DEFINITIONS

§ 16.1.1 Provide: As used in connection with labor, materials and equipment shall mean to furnish and install complete, including connections to utilities or service, complete anchorage and suspension, fastening or anchor devices, trim, finish and other related work, unless specified otherwise.

§ 16.1.2 Accepted, approved, satisfactory, equal to, proper, as directed and similar terms: These shall mean the decision rests with the Architect, whose decision shall be final and binding upon the Contractor and subcontractors.

§ 16.1.3 Project, Work, Job: In the technical sections or on the drawings, these terms may be used interchangeably and are synonymous. They shall mean the facility, construction and/or improvement within the intent and scope of the Contract Documents. The terms shall mean the entire facility, or separable parts as appropriate to the use of the term, including that under subcontract where applicable, and includes labor, materials, equipment, services and skill.

§ 16.1.4 Notice to Proceed: This shall be written notice by the Construction Manager to the Contractor to commence Work of the Contract, issued either before or after execution of the Contract. In issuing the Notice, stipulations may be included as to time and other requirements that may condition commencement of the Work.

§ 16.2 USE OF DRAWINGS AND SPECIFICATIONS

§ 16.2.1 During construction, the Contractor shall examine and use all Specifications and Drawings for the Project, including those that may primarily pertain to other work the Contractor normally does not perform with his own forces. The Contractor shall use all of the Project Drawings and Specifications: for a complete understanding of the Project and the Work; to determine the type of construction and systems; for coordination; to determine what other work may be involved in various parts or phases; to anticipate and notify others when work will be required; and all other relevant matters related to the Project. The Contractor shall also be bound by all the requirements to complete his Work, that are applicable to, pertain to, or affect the Work, as may be shown or inferred by the entire set of Drawings and Specifications.

§ 16.3 PERIODIC PAYMENT ESTIMATE

§ 16.3.1 When required by the Owner to establish a schedule of money available to make payment of periodic Applications for Payment, the Contractor shall provide an estimate by months, of the anticipated amounts for each periodic payment. The retained percentage shall be considered in the estimate schedule, as well as anticipated job progress and materials delivery. The schedule will be deemed an estimate only, for financial planning purposes, and the Contractor shall not be bound to conform to the schedule. The schedule may be required by the Contract Documents or requested by the Owner after Contract execution.

§ 16.4 LAYOUT OF THE WORK

§ 16.4.1 Each Contractor shall employ a qualified engineer or registered surveyor to stake out and locate the construction, locate property markers and other points as needed to properly locate the Work under this Contract.

§ 16.4.2 The Contractor shall recognize that the drawings necessarily are diagrammatic, in many instances. All work and in particular, exposed piping, ducts, conduit and similar items shall be neatly and carefully laid out to provide the most useful space utilization and the most orderly appearance. Except as otherwise indicated or directed, piping and similar work shall be installed as close to ceilings and walls as conditions permit, located to prevent interference with other work or with the use of the spaces in the manner required by the functions of the room and the Owner. Valves shall be located in inconspicuous but accessible places. Before proceeding with any work, particularly where exposed, the Contractor shall carefully plan the layout and review it with the Architect and Construction Manager for acceptability of location.

§ 16.4.3 The Contractor shall verify grades, line levels and dimensions shown on drawings and report any errors or inconsistencies to Architect, through the Construction Manager for decision before commencing work. The Contractor and subcontractor shall be responsible for the correct location, dimensions and elevations of his Work. As the Work progresses, the Contractor shall be responsible for the layout of the exact location of all partitions and similar features, as guide to all trades.

§ 16.5 GENERAL QUALITY OF WORK, INSTALLATION AND OPERATION

§ 16.5.1 All of the Work shall be strictly first quality, in materials, erection, installation and workmanship.

§ 16.5.2 The Contractor shall request interpretations from the Architect, through the Construction Manager, for the following: Work indicated on the Drawings or specified in such a manner as to make it impossible to produce Work of the highest quality within the space shown; possibilities of damaging effects of expansion and contraction; discrepancies found between Drawings or between Drawings and Specifications. If the Contractor does not request such interpretation, no excuse will be entertained thereafter for failure to carry out and guarantee the Work in a satisfactory manner. Elements of the Work intended to protect against the weather shall be guaranteed weatherproof and watertight.

§ 16.5.3 Proper performance of the Contract shall imply correct and proper placement, proper or published results for products and equipment, fitting and operation of fixed or movable and operating parts of the Work, including doors, windows, hardware and all systems and equipment. Materials and equipment shall be completed in every respect, with parts, connections, anchors, devices, backing, fittings and other necessary items, and shall be completely installed, anchored, fitted and placed in operating condition. Before buying, constructing or installing work, the

Contractor shall notify the Architect of conditions which exist in the Contract Documents which will adversely affect proper operation of first quality installation.

§ 16.5.4 Throughout the Project, accommodate various materials and pieces of equipment that are fitted to other materials and equipment and various materials that are applied to which other materials attach. Take all reasonable precautions to insure materials, devices, items, equipment or other products can be satisfactorily applied or installed to each other or work of others and make necessary adjustments during preparation of shop drawings or in advance of field or shop work to accommodate other work.

§ 16.5.5 Materials or equipment shall be installed or applied according to directions of the manufacturer or recommendations of an association dealing primarily with materials, unless specifically designated otherwise. In no case shall installation, including any temporary work necessary (e.g., shoring), be below standard recommended by manufacturer. Where specified requirements exceed the manufacturer's standards, the specification shall govern. Fabrication (including reinforcing and accessories) and installation shall be provided to insure proper placement and use of the item or material under the location, use, condition, and available space to serve intended function and to meet code requirements. Equipment and devices shall be provided and installed to "fail safe" under normal operating conditions and it shall be Contractor's obligation to provide and install work in such manner.

§ 16.6 GENERAL FIRE SAFETY

§ 16.6.1 The Contractor shall exercise extreme care to maintain the exercise adequate fire safety precautions throughout construction. This shall include providing sufficient devices, watchmen, standby helpers or other precautions during construction, in use of temporary heat, welding, brazing, sweating, testing or other phases of work. Welding, brazing, cutting and sweating operations performed in vicinity of, or accessible to, combustible materials shall be adequately protected to make certain that sparks or hot slag do not reach the combustible materials and start a fire. Glass and glazed material shall be masked from splatter. When necessary to do cutting, welding, brazing, sweating, in vicinity of wood, or combustible material (and the combustible material cannot be removed), the materials shall be adequately protected with fireproof coverings. In addition, a helper shall be stationed nearby with property fire extinguishers to guard against sparks and fire.

§ 16.6.2 Whenever combustible materials have been exposed to sparks, molten metal, hot slag, or splatter, a watchman shall be kept at the place of work for at least two hours after completion to make sure that smoldering fires have not been started. Whenever cutting or welding operations are carried on in a vertical pipe shaft, a watchman to act as a fire guard shall be employed to examine floors below the point of cutting or welding. This fire guard shall be kept on duty at least two hours after completion of the work to guard against fires and he shall examine each level after this time, prior to leaving.

§ 16.7 RESPONSIBLE CONTRACTOR

§ 16.7.1 To the extent applicable, and to the full extent required by law, the Contractor (i) acknowledges that all provisions of Minn. Stat. § 16C.285 shall be fully incorporated herein by reference and made applicable to the Contract and (ii) shall comply with all provisions of Minn. Stat. § 16C.285, including, without limitation, verifying under oath to Owner the Contractor's compliance and providing and updating a list of the Contractor's first-tier subcontractors retained to provide any work on the Project. The Contractor is responsible to ensure compliance with the terms of Minn. Stat. § 16C.285 by all of its subcontractors. The Contractor shall indemnify the Owner and Construction Manager for all costs, expenses and damages (including reasonable attorney's fees) incurred by the Owner or Construction Manager as a result of the Contractor's failure to comply with the terms of this Section. The Contractor's failure to comply with this Section shall constitute a material breach of the Contract. All references to Minn. Stat. § 16C.285 in this Section shall mean the current version of such § 16C.285 applicable on the date of the Contract, including any replacement statute thereof.

§ 16.8 EXAMINATION OF BOOKS AND RECORDS

§ 16.8.1 The books, records, documents and accounting procedures and practices of the Contractor as they relate to this Contract are subject to examination of the Owner, and either the Legislative Auditor or the State Auditor, as appropriate, for a period of six (6) years following termination or expiration of this Contract.

§ 16.8.2 If the contracting agency is a local unit of government, and the grantee, vendor, or other party requests that the state auditor examine all books, records, documents, and accounting procedures and practices related to the contract, the grantee, vendor, or other party that requested the examination shall be liable for the cost of the examination.

§ 16.9 COMPLIANCE WITH LAWS AND STANDARDS

§ 16.9.1 The Contractor shall comply with all applicable federal and state statutes and regulations as well as local ordinances now in effect or hereafter adopted at no additional cost to Owner.

16.9.2 Contractor specifically represents that all goods furnished pursuant to this contract shall comply with any and all applicable patent trademark and copyright laws and standards. Contractor further represents that it is fully authorized, franchised, or licensed to sell any goods furnished pursuant to this contract.

§ 16.9.3 Failure to meet the requirements of sections 16.9.1 and 16.9.2 above may be cause for the Owner to cancel this contract effective the date of receipt of the Notice of Cancellation, in addition to any other remedies set forth in this contract or otherwise available in law or equity.

§ 16.10 DATA PRIVACY

16.10.1 All data collected, created, received, maintained, or disseminated, or used for any purposes in the course of the Contractor's performance of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, or any other applicable state statutes and any state rules adopted to implement the Act, as well as state statutes and federal regulations on data privacy. The Contractor agrees to abide by these statutes, rules, and regulations and as they may be amended.

§ 16.11 INDEPENDENT CONTRACTOR

That at all times and for all purposes hereunder, Contractor shall be an independent contractor and is not an employee of the Owner for any purpose. No statement contained in this contract shall be construed so as to find Contractor or it's "agents" to be an employee of Owner, and Contractor or it's "agents" shall not be entitled to any of the rights, privileges, or benefits of employees of the Owner, including, but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.