

**GROSSE POINTE PUBLIC SCHOOL SYSTEM
NOVEMBER 2018 BOND PROGRAM
REQUEST FOR PROPOSAL (RFP) – CONSTRUCTION MANAGEMENT SERVICES
DECEMBER 20, 2018**



PROPOSAL DUE: **January 24, 2019 at 2:00 p.m. Local Time**

OWNER: Grosse Pointe Public School System
389 St. Clair
Grosse Pointe, MI 48230

PRE-PROPOSAL MEETING: **January 3, 2019 at 11:00 a.m. Local Time**
Grosse Pointe Public School System
Administration Building
389 St. Clair
Grosse Pointe, MI 48230

PRE-PROPOSAL QUESTIONS DUE: **January 10, 2019 by 2:00 p.m. Local time**
Robert Stempien, AIA
Plante Moran Cresa
248-603-5252
Robert.stempien@plantemoran.com

SUBMIT WRITTEN PROPOSAL TO: Grosse Pointe Public School System
Attn: Ms. Lisa Abbey
Deputy Superintendent for
Business and Operations
389 St. Clair
Grosse Pointe, MI 48230

SUBMIT ELECTRONIC FORMS TO*: Robert.stempien@plantemoran.com
***Please submit electronic proposals with 24 hours AFTER due date and time.**

CM INTERVIEWS: By Invitation Only
February 1, 2019 time TBD

DESCRIPTION OF PROCUREMENT: Construction Management Services for
Grosse Pointe Public School System's \$111M
Bond Program, of which \$69M is "Cost of
Work."

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PROJECT DETAILS	
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Grosse Pointe Public School System (hereafter referred to as “GPPSS” or “Owner”) has engaged Plante Moran Cresa (hereafter referred to as “PMC”) to provide Owner Representation Services for the Construction Manager (“CM”) selection process of the November 2018 Bond Program (“Bond Program”). Your Firm is invited to submit a Proposal for the services required in this RFP in accordance with this letter and the following documents which are attached hereto, made a part hereof, and form the Contract Documents which may result from this RFP. GPPSS has determined to engage qualified Firms for the following types of projects:

- (2) High Schools (approximately \$26.6M)
- (3) Middle Schools (approximately \$15.4M)
- (9) Elementary Schools (approximately \$24.9M)
- (2) Support Buildings (approximately \$2.1M)

The anticipated total Cost of Work is approximately \$69M (refer to Attachment B.1. for a more detailed summary of construction costs for each building). This amount is inclusive of hard construction costs, CM fees and costs but exclusive of all professional fees and costs, permits, testing, contingencies, technology, pavement and roofing costs at this time. Once the selected CM Firm is engaged, an updated Cost of Work will be established during the bidding process. Technology oversight should not be included in the CM’s services, except for coordination purposes. To be considered for this RFP, CM firms must meet the minimum qualifications. This RFP includes the following attachments:

A. Project Overview	
1. Project Overview	1 page
2. Scope of Services	1 page
B. Project Scope	
1. Bond Program Budget	1 page
2. Bond Program Preliminary Phasing Schedule	2 pages
C. Contract Documents	
1. Standard Form of Agreement: AIA A133 – 2009, as amended	29 pages
2. General Conditions: AIA A201 – 2007, as amended	77 pages
D. Proposal Forms	
1. Detailed Proposal Form	2 pages
2. Cost Workbook	8 pages
2a. Cost Workbook Instructions	2 pages
3. Firm Experience	1 page
4. Team Experience	1 page
5. CM Request For Qualifications	14 pages
6. Iran Disclosure Statement	1 page
7. Familial Disclosure Statement	1 page
8. Criminal Background Statement	1 page

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This Request for Proposal (“RFP”) does not commit Owner to award a contract or to undertake any financial obligation whatsoever with respect to the requirement referred to herein. Owner reserves the right to accept or reject any Proposal, in whole or in part, with or without cause, to negotiate with any Firm it has selected as qualified, to not award a contract, or to award one or more contracts. Owner further reserves the right to waive any irregularity or informality in this RFP process or any Proposal, and the right to award the Contract to any other than the Firm(s) submitting the best financial Proposal (low proposed Firm). Owner reserves the right to accept or reject, without consideration, any Proposal which arrives late. Owner reserves the right to request additional information from any or all Firms. In addition, notice is hereby given of the possibility that award may be made without discussion of the Proposal. In the event Firm’s Proposal is accepted by Owner and Firm asserts exceptions, special considerations or conditions after acceptance, Owner, in its sole and absolute discretion, reserves the right to thereafter reject the Proposal and award another Firm. Therefore, the Firms should submit their best Proposal initially from both technical and cost standpoints.

1. PRE-PROPOSAL

- A. If additional information is needed by the Firm, written instructions covering such items will be issued by the Owner’s Representative to all Firms, and such items shall be included in the Proposal. No oral instructions or interpretations will be considered as binding on the Owner unless confirmed by a written addendum. If it becomes necessary to revise any part of this RFP, notice of the revision will be posted on the e-Builder site and can be accessed by the link listed under Item E below. All addenda issued shall become a part of this RFP. Each Firm must in its Proposal, to avoid any miscommunication, acknowledge all addenda which it has received, but the failure of a Firm to receive, or acknowledge receipt of, any addendum shall not relieve the Firm of the responsibility for complying with the terms thereof.
- B. Firms may request that Owner clarify information contained in this RFP. All such requests and inquiries must be made in writing via email to Robert Stempien as indicated on the first page of this RFP. Owner will not respond to any Request for Clarification received after January 10, 2019 at 2:00 p.m. The response to any Request for Clarification will be posted at the e-Builder site referenced below under Item E.
- C. **CONFIDENTIALITY** - PROPOSALS AND ANY MODIFICATIONS THERETO SHALL BE SUBMITTED ONLY TO THE UNDERSIGNED. FAILURE TO COMPLY STRICTLY WITH OWNER’S INSTRUCTIONS REGARDING THE CONTENT AND MANNER OF SUBMISSION OF PROPOSAL INCLUDING, WITHOUT LIMITATION, DISCLOSURE OF ANY INFORMATION IN THE PROPOSAL OR MODIFICATIONS THEREOF TO ANY THIRD PARTY OR OTHER GPPSS’S BOARD MEMBERS OR STAFF WITHOUT THE EXPRESS, PRIOR WRITTEN APPROVAL OF THE UNDERSIGNED, MAY RESULT, AT OWNER’S SOLE DISCRETION, IN THE IMMEDIATE DISQUALIFICATION OF THE FIRM.
- D. Provide name, address, telephone and fax number, and e-mail address of the Firm responding to this Request for Proposal. Please designate a single representative or prime contact with which PMC or Owner may communicate.
- E. Bid/RFP documents may be obtained at the e-Builder website created by PMC and can be accessed by selecting the link below.

<https://app.e-builder.net/public/publicLanding.aspx?QS=6750952324654a2098c2afd26bb2cb49>

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Please contact LaMerra Hobbs at (248) 603-5242 or via email at LaMerra.Hobbs@plantemoran.com for e-Builder access assistance should you encounter any difficulties. Note, registration of your name, company's name and email address will be required.

2. PROPOSAL FORMAT

Prepare and submit three (3) copies of your Proposal package to Ms. Lisa Abbey, the GPPSS designee listed on the cover page. Packages should be in 8.5" x 11" format. Additionally, include one digital copy in PDF format. Each Proposal package must be organized and consist of the documents, listed below:

The following proposal format is required:

- Cover Letter
- Section 1 Proposal Forms (per section D above)
 - A. Detailed Proposal Form
 - B. Cost Workbook
 - C. Firm Experience
 - D. Team Experience
 - E. CM Request for Qualifications
 - F. Iran Disclosure Statement
 - G. Familial Disclosure Statement
 - H. Criminal Background Statement
- Section 2 Clarifications / Exceptions
- Section 3 Additional Information

SECTION 1 – PROPOSAL FORMS

For the following subsections, complete and attach the Proposal Forms provided as Attachments D.1 – D.8. Editable electronic versions of these forms may be obtained at the e-Builder link provided above in Item 1E.

SECTION 1A – Detailed Bid Proposal Form

- ◆ Utilize the Proposal Form provided as Attachment D.1 to this RFP.
- ◆ Proposals shall include acknowledgement that the Firm has:
 - Reviewed and understands information and data provided in the Request for Proposal
 - Confirmed that compensation described within the Proposal will be adequate for the execution of all phases of services required by the Request for Proposal and Contract
 - Meets all minimum qualifications as noted in Section 14
- ◆ Please provide the fees and costs for the various components of the project based on the "Cost of the Work."
- ◆ Acknowledge by checking the appropriate box that by submitting this proposal you agree with the Contract terms as provided in the referenced documents.
 - Any exceptions that your Firm takes to the terms and conditions listed must be specifically referenced in your Proposal. Provide in Section 2 of your Proposal

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alternative language that would be acceptable to each provision.

- The prevalence of these exceptions will be considered in reviewing your Proposal and in the final selection of the Firm for the Project. Proposals that do not acknowledge these agreements or do not provide specific alternative language may be rejected.
- Any exceptions to the terms and conditions contained in the Contract, or any other special consideration or conditions listed by the Firm relative to this RFP or the form Contract will not be binding upon Owner unless expressly accepted by Owner and incorporated into the final Contract.

SECTION 1B – COST WORKBOOK

- ◆ Utilize the Cost Workbook provided as Attachment D.2 to this RFP.
- ◆ Follow the instructions in the Cost Workbook provided as Attachment D.2a.
- ◆ Cost Proposals must reflect the Preliminary Phasing Schedule included within this RFP as Attachment B.2.
- ◆ Provide a man-hour/task allocation matrix to illustrate planned staffing strength for each phase of professional service.
- ◆ If your Firm is unable to provide services within the time parameters shown on our attachments, please outline your proposed schedule for services.

SECTION 1C – FIRM EXPERIENCE

- ◆ Please complete the enclosed Firm Experience form in Attachment D.3 detailing all projects your Firm has completed in the last 10 years with special emphasis on projects which meet the minimum requirements noted in this RFP. Please include all information requested to the best of your ability.
- ◆ Attach all relevant projects of previously renovated high schools, middle schools, and/or elementary school buildings or similar type facilities in the last ten (10) years. Project examples should reflect renovations of older buildings (pre-1940's) and proposed team member involvement.

SECTION 1D – TEAM EXPERIENCE

- ◆ Please complete the enclosed Team Experience form in Attachment D.4 detailing the projects which the proposed team have worked on together.
- ◆ Attach a Project Organizational Chart outlining your proposed team structure for this Bond Program. Organizational charts must include any individual for which a resume has been submitted. Resumes should include project role, years of experience in the Construction profession, professional degree, registrations, number of years with Firm, experience that pertains to GPPSS Bond Program project scope of work, references, and unique attributes to help provide a successful project outcomes. State the project lead (main point of contact), the reason why chosen for this role and current project commitments.
- ◆ If selected, the Firm shall assign and guarantee that the proposed professionals shall work in their proposed capacity on the programs. If unforeseen circumstances occur and substitution is necessary, the Firm shall, within five (5) business days, propose one or more professionals who are at least equal in competency and relevant experiences.

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The Owner shall have the opportunity to interview the proposed professionals and make the final determination for a substitute.

SECTION 1E – CM Request for Qualifications Form

- ◆ Complete in its entirety the Request for Qualifications Form included as Attachment D.5.
- ◆ Attach all required documents.
- ◆ Complete electronic submission as instructed on the Form.
- ◆ Attach a PDF copy of the completed Form to your Proposal in this Section 1E.
- ◆ All financial information provided will be kept confidential to the extent permitted by law. Firms are on notice that such financial information may be subject to a Freedom of Information Act request.

SECTION 1F – Iran Disclosure Statement

- ◆ Complete and attach the Iran Disclosure Statement included as Attachment D.6 to this RFP.

SECTION 1G – Familial Disclosure Statement

- ◆ Complete and attach the Familial Disclosure Statement included as Attachment D.7 to this RFP.

SECTION 1H – Criminal Background Disclosure Statement

- ◆ Complete and attach the Criminal Background Disclosure Statement included as Attachment D.8 to this RFP.

SECTION 2 – CLARIFICATIONS / EXCEPTIONS

- ◆ Please detail any clarifications, exceptions or exclusions to this RFP (scope, schedule, fee, etc.).
- ◆ List any/all exceptions taken to the Contract Documents provided as Attachments C.1 and C.2. For each exception, alternative language must be proposed. Owner reserves the right to reject any proposed alternative language.

SECTION 3 – ADDITIONAL INFORMATION

- ◆ Please include any additional relevant information.

3. PROPOSAL SUBMISSION

A. SUBMITTAL

Sealed proposals for the work as described by the RFP package will be received as noted on the cover page. Please mark the envelope of all proposals “Grosse Pointe Public School System – Proposal for CM Services” and include your Firm’s name as well. Include the required digital copy in PDF format on electronic media. Digital media will not be returned.

Proposals received after this date and time will not be considered. Proposals submitted by fax or email will not be accepted.

B. Owner reserves the right to reject or accept, in whole or in part, any or all Proposals

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submitted, waive any irregularities therein, and to award the Contract to other than the lowest proposed Firm.

- C. If awarded the Contract, the Firm will execute the proposed Contract and provide all required certificates of insurance and bonds that meet the requirements as indicated in the attached Contract, prior to the start of any work.
- D. All Firms shall be responsible for familiarizing themselves with the information provided. Failure to do so shall in no way incur any delays in work or additional cost to the Owner.

4. RESPONSIVENESS

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

5. ADDENDA

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

6. LATE PROPOSALS

Each Firm is responsible for submission of its Proposal. Proposals or Proposal revisions received after the Due Date, as listed on the first page of this RFP, may be rejected. Owner is not liable for any delivery or postal delays.

7. RETURNED PROPOSALS

Proposals received after the Due Date may be unopened and made available to the respective Firms for pickup at their sole cost and expense.

8. FORM OF AGREEMENT

- A. This is a Request for Proposal only. Proposals will be treated as offers to enter into the Contract with GPPSS. Owner and successful Firm shall memorialize their contractual relationship and obligations using the form of Contract attached to this RFP. The Contract contains many details regarding the Services required under this RFP, as well as the terms and conditions under which the Services shall be provided by the successful Firm. The Contract should be reviewed carefully by each Firm prior to submitting a Proposal. Any exceptions to the terms and conditions contained in the Contract, or any other special considerations or conditions requested or required by the Firm relative to this RFP or the form of Contract shall be expressly/specifically enumerated by the Firm and be submitted as part of its Proposal, together with an explanation as to the reason such terms and conditions cannot be met by, or, in the Firm's opinion are not applicable to, the Firm, provided however, that exceptions or special conditions of the Firm will not be binding upon GPPSS unless those exceptions or special conditions are expressly accepted by GPPSS, and incorporated into the final Contract. Following the selection of the successful Firm, if any,

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by GPPSS, the Contract will be finalized by the parties. The final Contract shall be subject to the review and approval by GPPSS's legal counsel.

- B. This RFP is for the purpose of negotiating a Guaranteed Maximum Price contract for Construction Management Services as described in the attached Project Criteria/Scope of Services, Attachment A.1. AIA Document A133 - 2009 as amended, Standard Form of Agreement between Owner and Construction Manager as Constructor and AIA document A201-2007 General Conditions of the Contract for Construction, as amended will be utilized. This Contract will be directly between Owner and the Construction Manager.

9. DOCUMENT CONFLICTS

Where conflicts occur within this RFP and its contents and any addenda, the Standard Form of Agreement, general, supplemental and other conditions, etc. the provision more favorable to the Owner, determined in its sole discretion, shall govern.

10. UNSOLICITED TERMS AND CONDITIONS

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

11. FEES/TAXES

All proposals in original contract work, and for all other work there under, shall include all applicable taxes, including Social Security, unemployment, and sales or use taxes, and any other taxes specifically levied on the work or on wages by local, city, state, or federal government, except real property taxes on the site. Proposals shall also include all premiums, assessments, and other like payments, charges, and costs incidental to the work covered by the contract documents. No fees or costs shall be incurred or paid by the Owner for labor, professional, reimbursables, etc. accumulated in response to this RFP.

12. PROPOSAL COSTS

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

13. IRREVOCABILITY OF PROPOSALS

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

14. MINIMUM QUALIFICATIONS

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

- A. Firm has been in business for at least the last ten (10) consecutive years.
- B. Firm has a bonding capacity for a single project of at least \$50,000,000.

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- C. Firm must have successfully completed three (3) school bonds of at least \$50,000,000 each (work managed) in the last ten (10) years.
- D. Be familiar with and have experience in the K-12 education sector including having at least five (5) educational clients in the last ten (10) years.
- E. Firm must have an EMR (Experience Modification Rate) of 1.0 or less at the time of Proposal.

15. RECEIVING OF PROPOSALS

At the specified location and Due Date stated above, all submitted Proposals will be acknowledged and dated. Proposals will not be publicly opened. Post bid interviews may be conducted, per invitation only, on the dates listed above. No immediate decision will be rendered. Any decision made by GPPSS, including the Firm's selection, shall be final.

16. RESTRICTION ON COMMUNICATION

From the issue date of the RFP until a Firm is selected and selection announced, a prospective Firm shall not communicate about the subject of the RFP or the Firm's Proposal with Owner, its Board of Education, or any individual member, administrator, faculty, staff, students, or employees, except as permitted by the Requests for Clarifications paragraph above.

17. RESERVATION OF RIGHTS:

GPPSS reserves the right, in its sole and absolute discretion (for this provision and all other provisions contained in this RFP), to accept or reject, in whole or in part, any or all Proposals with or without cause. GPPSS further reserves the right to waive any irregularity or informality in the RFP process or any Proposal, and the right to award the Contract to other than the Firm(s) submitting the best financial Proposal (low proposed Firm). GPPSS reserves the right to request additional information from any or all Firms. GPPSS reserves the right to negotiate with the Firms concerning their Proposals. GPPSS reserves the right to select one or more Firms to perform the Services on behalf of GPPSS. In the event your Firm's Proposal is accepted by GPPSS and your Firm asserts exceptions, special considerations or conditions after acceptance, GPPSS, in its sole and absolute discretion, reserves the right to reject the Proposal and award the Contract to another Firm. Each Firm by submitting its Proposal releases GPPSS from any and all claims arising out of, and related to, this RFP process and selection of a Firm(s).

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18. AUTHORITY TO SIGN

Proposals must be signed by an officer of the Firm who is authorized to enter into binding agreements. Any question on this Request for Proposal should be directed via email to the designee listed on the first page of this RFP.

Sincerely,
Plante Moran CRESA

A handwritten signature in black ink, appearing to read 'Robert Stempien', written over a horizontal line.

Robert Stempien, AIA
Senior Vice President
Plante Moran CRESA

Attachments: (A.1) to (D.8) as listed

**GROSSE POINTE PUBLIC SCHOOLS
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ATTACHMENT A.1 – PROJECT OVERVIEW
DECEMBER 20, 2018**

The total Bond Program budget is projected to be approximately \$111M and includes the following;

- (2) High Schools (approximately \$26.6M)
- (3) Middle Schools (approximately \$15.4M)
- (9) Elementary Schools (approximately \$24.9M)
- (2) Support Buildings (approximately \$2.1M)

The anticipated total Cost of the Work is approximately \$69M (refer to Attachment B.1. for a more detailed summary of construction costs for each building). This amount is inclusive of hard construction costs, CM fees and costs but exclusive of all professional fees and costs, permits, testing, contingencies, technology, pavement and roofing costs at this time. Once the selected CM Firm or Firms are engaged, an updated Cost of Work will be established during the bidding process. Technology oversight should not be included in the CM's services, except for coordination purposes.

The anticipated design and construction duration is 60 months with construction starting in 2019 (see attachment B.2).

The outline in Attachment A.2 along with the Contract Documents in Attachment C, set forth the required Scope of Services for Construction Management services including but not limited to scheduling, document review, estimating, value engineering, review and coordination of owner furnished equipment, cash flow analysis, scoping of bid packages, subcontractor/vendor solicitation and prequalification, construction staging and site management, and Bidding and Construction Phase services.

The successful Firm(s) will be required to work with the GPPSS, PMC and the Design Professional team(s) to determine the optimal scope of work and construction phasing plan to complete each project/program, while meeting the overall Bond Program schedule and budget.

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ATTACHMENT A.2 – SCOPE OF SERVICES
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The terms and conditions of Agreement between Owner and Firm shall be substantially based on the attached American Institute of Architects Standard Form of Agreement A133-2009, as modified, General Conditions A201 – 2007, as modified and as clarified below.

The following is intended to assist the Firm in understanding required tasks to be performed:

The total Bond Program budget is projected to be approximately \$111M and includes the following;

- (2) High Schools (approximately \$26.6M)
- (3) Middle Schools (approximately \$15.4M)
- (9) Elementary Schools (approximately \$24.9M)
- (2) Support Buildings (approximately \$2.1M)

The anticipated total Cost of the Work is approximately \$69M (refer to Attachment B.1. for a more detailed summary of construction costs for each building). This amount is inclusive of hard construction costs, CM fees and costs but exclusive of all professional fees and costs, permits, testing, contingencies, technology, pavement and roofing costs at this time.

The complete Scope of Services is detailed and described in the Contract Documents included in Attachment C.

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ATTACHMENT “B.1.” – BOND PROGRAM BUDGET
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Grosse Pointe Public School System SUMMARY OF COSTS BY SCOPE OF WORK											
Bldg #	Name of School Facility	1.0 Site Work	2.0 Building Envelope	3.0 Interior Renovations	4.0 Plumbing Systems	5.0 HVAC Systems	6.0 Electrical Systems	7.0 Security	Sub Total	CM Fees	Cost of Work Total
	ELEMENTARY:										
1	Defer Elementary School	\$ 10,400	\$ 93,600	\$ 305,786	\$ 5,200	\$ 1,466,403	\$ 357,345	\$ 318,240	\$ 2,556,974	\$ 191,773	\$ 2,748,747
2	Ferry Elementary School	\$ 10,400	\$ 140,400	\$ 966,108	\$ -	\$ 482,568	\$ 470,036	\$ 107,120	\$ 2,176,633	\$ 163,247	\$ 2,339,880
3	Kerby Elementary School	\$ 6,760	\$ 78,000	\$ 206,700	\$ -	\$ 1,768,400	\$ 286,621	\$ 104,000	\$ 2,450,482	\$ 183,786	\$ 2,634,268
4	Maire Elementary School	\$ 6,760	\$ 93,860	\$ 1,000,563	\$ -	\$ 1,326,624	\$ 325,520	\$ 309,920	\$ 3,063,247	\$ 229,744	\$ 3,292,991
5	Mason Elementary School	\$ 10,400	\$ 104,000	\$ 511,342	\$ -	\$ 1,253,262	\$ 351,114	\$ 126,880	\$ 2,356,999	\$ 176,775	\$ 2,533,774
6	Monteith Elementary School	\$ 10,920	\$ 52,000	\$ 1,148,706	\$ -	\$ 1,533,706	\$ 396,364	\$ 319,280	\$ 3,460,976	\$ 259,573	\$ 3,720,549
7	Poupard Elementary School	\$ 5,200	\$ 214,760	\$ 914,264	\$ -	\$ 1,534,956	\$ 403,305	\$ 315,120	\$ 3,387,605	\$ 254,070	\$ 3,641,675
8	Richard Elementary School	\$ -	\$ 124,800	\$ 236,340	\$ -	\$ 532,557	\$ 301,547	\$ 257,920	\$ 1,453,165	\$ 108,987	\$ 1,562,152
9	Trombly Elementary School	\$ 9,360	\$ 78,000	\$ 358,956	\$ -	\$ 1,224,636	\$ 333,585	\$ 302,640	\$ 2,307,178	\$ 173,038	\$ 2,480,216
	MIDDLE:										
10	Brownell Middle School	\$ -	\$ 78,000	\$ 784,056	\$ 145,600	\$ 1,697,778	\$ 463,576	\$ 610,480	\$ 3,779,491	\$ 283,462	\$ 4,062,952
11	Parcells Middle School	\$ -	\$ 78,000	\$ 1,671,956	\$ 468,000	\$ 1,556,428	\$ 807,778	\$ 444,080	\$ 5,026,242	\$ 376,968	\$ 5,403,210
12	Pierce Middle School	\$ 8,840	\$ 150,800	\$ 1,252,940	\$ 405,600	\$ 2,809,203	\$ 541,691	\$ 361,920	\$ 5,530,994	\$ 414,825	\$ 5,945,818
	HIGH:										
13	North High School	\$ -	\$ 2,095,600	\$ 2,695,834	\$ 116,480	\$ 6,274,917	\$ 1,144,558	\$ 360,880	\$ 12,688,269	\$ 951,620	\$ 13,639,890
14	South High School	\$ 104,000	\$ 111,280	\$ 1,200,784	\$ 582,400	\$ 7,741,079	\$ 1,434,340	\$ 852,800	\$ 12,026,683	\$ 902,001	\$ 12,928,684
	SUPPORT:										
15	Barnes Early Childhood Center	\$ 4,680	\$ 93,600	\$ 586,040	\$ 5,200	\$ 410,656	\$ 245,567	\$ 327,600	\$ 1,673,343	\$ 125,501	\$ 1,798,844
16	Administration	\$ 7,280	\$ 52,000	\$ 3,640	\$ -	\$ -	\$ 225,661	\$ 45,760	\$ 334,341	\$ 25,076	\$ 359,417
	TOTAL BUILDINGS BUDGET	\$ 195,000	\$ 3,638,700	\$ 13,844,015	\$ 1,728,480	\$ 31,613,174	\$ 8,088,611	\$ 5,164,640	\$ 64,272,620	\$ 4,820,446	\$ 69,093,066

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ATTACHMENT B.2 - PRELIMINARY PHASING SCHEDULE
DECEMBER 20, 2018**

Preliminary Schedule

The schedule descriptions below are intended to give a general overview of the Bond Program being considered by GPPSS. Once engaged, the CM Firm will consult with GPPSS, PMC, the Architect(s) and the Owner's other vendors to confirm and refine the phasing and bid packaging for the different Programs. Once determined, a formal schedule will be prepared and become a part of the Contract.

Accordingly, we are requesting a proposal for Preconstruction Services (not-to-exceed), Personnel Costs (not-to-exceed), and Construction Support Services (not-to-exceed) and CM Fee (based on a percentage of the Cost of the Work) for these Programs based upon the phasing and sequencing noted below.

It is the intention to design and bid secured vestibule projects at various District buildings along with some roofing and potential paving projects in 2019.

Two (2) High Schools

GPPSS desires to complete all Work at these facilities over the next 28 months. Phasing may necessitate multiple Projects at each building and may include construction beyond the typical summer season. Design will start immediately in January 2019. It is anticipated that design work will last into Summer/Fall 2019 with bidding to follow in November 2019 with award in December 2019. Construction would begin the summer of 2020 as allowable by GPPSS.

- (2) High School Buildings - work anticipated to commence January 2019 thru October 2019 for both high schools with construction starting in 2020:
 - o South High School – Construction start May 2020 / Complete Fall 2021
 - o North High School – Construction start May 2021 / Complete Fall 2022

The Owner would also prefer to complete as much renovation work over the summers as possible but understands that may not be entirely possible.

Nine (9) Elementary Schools, three (3) Middle Schools, two (2) support buildings

GPPSS desires to complete all Work at these facilities over the next 3-5 years starting in 2020-2023. Phasing may necessitate multiple Projects at each building and may include construction beyond the typical summer season. Construction would begin the in the spring/summer noted below as allowable by GPPSS with potential secured vestibule projects occurring in the summer of 2019.

- (9) Elementary Buildings -
 - o 2020 (1) Elementary School
 - o 2021 (1) Elementary School

**GROSSE POINTE PUBLIC SCHOOL SYSTEM - 2018 BOND PROGRAM
REQUEST FOR PROPOSAL (RFP) – CONSTRUCTION MANAGEMENT SERVICES
ATTACHMENT B.2 - PRELIMINARY PHASING SCHEDULE
DECEMBER 20, 2018**

- 2022 (3) Elementary Schools
- 2023 (4) Elementary Schools

- (3) Middle School Buildings –
 - 2020 (1) Middle School
 - 2021 (1) Middle School
 - 2022 (1) Middle School

- (2) Support Buildings -
 - Barnes Pre-K – 2023
 - Administration – 2023

The Owner would also prefer to complete as much renovation work over the summers as possible but understands that may not be entirely possible. The Owner may also consider packaging similar work across all buildings if practical and economical.

DRAFT

AIA® Document A133™ – 2009

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



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

BETWEEN the Owner:

(Name, legal status and address)

«Grosse Pointe Public School System »« »
«389 St. Clair »
«Grosse Pointe, MI 48230 »

and the Construction Manager:

(Name, legal status and address)

« »« »
« »

for the following Project:

(Name and address or location)

«2018 Bond Program as described in Exhibit __»
« »

The Architect:

(Name, legal status and address)

« »« »
« »

The Owner's Designated Representative:

(Name, address and other information)

«Lisa Abbey, Deputy Superintendent for Business and Operations »
«Grosse Pointe Public School System »« »
«389 St. Clair »
«Grosse Pointe, MI 48230 »

The Construction Manager's Designated Representative:

(Name, address and other information)

« »
« »
« »
« »

The Architect's Designated Representative:

(Name, address and other information)

« »
« »
« »
« »

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Construction Manager agree as follows.

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

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ARTICLE 1 GENERAL PROVISIONS

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

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement (hereinafter the “Agreement” or “Contract”), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment, attached hereto as **Exhibit A**, and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager’s skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Construction Manager shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, unless modified by this Agreement, the General Conditions of the Contract shall be as set forth in A201–2007, as modified for this Project, which document is incorporated herein by reference. The term "Contractor" or "Subcontractor" as used in this Agreement or in the A201–2007 shall mean the Construction Manager. The AIA Document A201–2007, General Conditions of the Contract for Construction, is amended to include the Architect's Supplemental Conditions to AIA General Conditions (herein after referred to as Architect's Supplemental General Conditions), which is also incorporated herein by reference. If there is conflict between the Architect's Supplemental General Conditions and the Contract Documents, (1) in matters pertaining to design and engineering, only the Architect's technical specifications and instructions specifically pertaining to the Project shall govern, and (2) in all other matters, the provision which requires the highest standard of performance shall prevail.

§ 1.4 Basic Compensation of the Construction Manager and of the underlying school construction Projects will be financed through the Owner's issuance of General Obligation Unlimited Tax Bonds (the "Bonds"). The Construction Manager shall not provide any further services beyond Pre-Bond Services until the Construction Manager receives written notice from the Owner that the Owner has issued the above-referenced Bonds and authorizes the Construction Manager to proceed under this Agreement, unless otherwise directed by the Owner in writing. Notwithstanding any other provision of this Agreement to the contrary, the Construction Manager acknowledges that compensation of any services to be performed by the Construction Manager is expressly contingent upon the Owner's issuance of General Obligation Unlimited Tax Bonds for all Projects. In the event that the Owner does not issue such Bonds, in the complete discretion of the Owner, the Owner may terminate this Agreement and the Owner shall not be responsible for compensating the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

As part of Basic Services, the Construction Manager shall perform the services identified in the Team Responsibility Matrix dated June 14, 2016, and attached hereto as **Exhibit H** under the heading of "Construction Manager." The Services required to be performed by the Construction Manager under the Team Responsibility Matrix demonstrate the coordination required by all of the parties, but does not in any way relieve the Construction Manager of any of its contractual obligations required hereunder.

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Construction Manager shall perform its services with competence and care, using skill and diligence consistent with honesty, integrity, candor, and in the interests of the Owner, not the interests of Subcontractors. The Construction Manager shall assign personnel to the Project in accordance with their qualifications, competency, and commensurate with the services to be provided. Any other Paragraph in this Agreement or any other document to the contrary notwithstanding, all services provided by the Construction Manager under this Agreement shall be performed in a reasonably prompt manner and in accordance with the standard of reasonable care and skill exercised by a construction manager of recognized experience and expertise similar to the Construction Manager's in the construction of public school facilities. The Construction Manager shall be responsible for the degree of care and skill for all services provided hereunder whether such services are provided directly by the Construction Manager, by the Construction Manager's employees or agents, or by any Contractors, Subcontractors or consultants hired by the Construction Manager. The Construction Manager acknowledges that the services to be provided by the Construction Manager under this Agreement includes assisting the Owner in complying with the Owner's obligations set forth in the Michigan Revised School Code (MCL 380.1 et seq., as amended), the School Building Construction Act (the "Act") (MCL 388.851 et seq., as amended), the Occupational Code (MCL 339.2011, as amended), the Stille-Derossett-Hale Single State Construction Code Act (MCL 125.501 et seq.), and the Michigan Building Code,. While the Construction Manager does not take responsibility for providing legal advice or design responsibility the services of the Construction Manager shall be provided consistent with those statutes. Further, the Construction Manager shall be responsible for all costs incurred to correct any action taken by the Owner based on the Construction Manager's services which are inconsistent with the requirements of those statutes. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase (See Exhibit B for Additional Scope of Services during Preconstruction Phase)

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other considering the Owner's long term plans regarding facilities, systems, and equipment, and shall assist the Owner and the Architect in order to arrive at a mutual understanding of the program, Project schedule, construction budget and other design parameters. By signing this Agreement, the Construction Manager certifies to the Owner that the Construction Manager has completed such a preliminary review of the Owner's Program and Project budget requirements, and the Owner's Program and Project Budget requirements are reasonably achievable, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall review all Drawings and Specifications to ensure that they contain provisions for all temporary facilities necessary to enable the construction team to perform their Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager's technical consultation to the Architect or other professional disciplines shall not infringe upon the design responsibility of those disciplines.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and at least monthly, or as otherwise agreed to by the Owner, showing percentages completed, update a Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect and shall take any corrective actions as directed. Upon review and acceptance by the Owner of the Project schedule, as evidenced by inclusion in the Guaranteed Maximum Price (GMP) Amendment, it shall be deemed part of the Contract Documents. If not accepted, the Project schedule shall be promptly revised by the Construction Manager in accordance with the recommendations of the Architect, Owner and the Owner's Representative and re-submitted for acceptance. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement, sequencing, duration and completion required of each Subcontractor and/or Supplier; phasing of the construction in a detailed critical path method (CPM); ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. The Construction Manager shall carefully review Drawings and Specifications together with the Project's preliminary construction schedule to minimize conflict and overlap of jurisdiction between separate members of the construction team.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the

Owner, as provided for in the Project schedule, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall notify the Owner and Architect in writing whenever the estimated Cost of the Work is anticipated to exceed the budget or when the design is such as to preclude meeting the completion schedule; and, when estimates of the Cost of the Work exceed the latest approved Project budget, the Construction Manager shall make recommendations for corrective action including changes in the Project scope and/or design so as to meet Owner's budget.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. The Construction Manager and the Architect, in consultation with the Owner, shall prepare and issue bidding documents to bidders, prepare and publish necessary bid advertisements and conduct pre-bid conferences with prospective bidders. The Construction Manager shall assist the Owner and Architect in: (1) obtaining competitive bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing contracts for construction. The Construction Manager shall issue the current Project schedule with each set of bidding documents. Construction Manager shall not distribute any bidding or procurement information to any third party without the Owner's and/or Architect's prior written approval. The Construction Manager shall, after reviewing the bidding documents with the Architect and Owner, assemble bid data including copies of Drawings, Specifications, and Contract Documents, formally advertise and issue invitations for bid in order to obtain competitive bids. The Construction Manager, with the assistance of the Architect, shall include in the bidding information, plans or Specifications, a requirement that the successful Contractor(s) shall provide operation manuals through the Construction Manager to the Owner and shall provide adequate training for the Owner in the operation of any and all facility systems installed by the Contractor(s) including mechanical, civil, electrical, heating, and/or air conditioning systems necessary for the operation of the building. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda. *(See Section 2.3.2.1.1 for advertising for bids requirements)*

§ 2.1.6.1 Following the Owner's approval of the Construction Documents, the Construction Manager shall update and submit the latest estimate of Construction Cost and the Project construction schedule for the Architect's review and the Owner's approval.

§ 2.1.6.2 The Construction Manager shall submit, for the Architect's review and the Owner's approval, a list of bidders who it suggests be specifically invited to bid (without excluding other parties permitted to bid under applicable law). Additionally, the Construction Manager acknowledges that the services to be provided by the Construction Manager under this Agreement shall include assisting the Owner in complying with all of the Owner's competitive bidding requirements under Sections 1267 and 1274 of the Michigan Revised School Code, as amended.

§ 2.1.6.3 The Construction Manager, with the assistance of the Architect, shall review bids, prepare bid analyses, conduct post-bid interviews and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids. When recommending awards to the Owner, it is the Construction Manager's responsibility to confirm to the Owner in writing that the successful bidder is the "lowest responsible bidder" as that term is used in Attorney General Opinion, 1959-60, No. 3303, Vol. 1, p. 169.

§ 2.1.6.4 The Construction Manager, with the assistance of the Architect, shall conduct pre-award conferences with successful bidders and prepare Construction Contracts for execution by and between the Construction Manager and the awarded Contractor(s), and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's approval, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of the Project's materials and equipment that must be ordered well in advance of construction. The estimate from the preliminary plans shall include purchase recommendations on materials or equipment requiring long lead times, and, recommendations on obtaining price commitments for priority materials, equipment and systems of construction, which are to be incorporated into the working drawings. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum

Price, the Construction Manager shall enter into all contracts approved by the Owner for these items and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

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

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.1.10 The Construction Manager shall advise on the division of the Project into individual contracts for various categories of Work, including the method to be used for selecting Subcontractors and awarding contracts. If multiple contracts are to be awarded, the Construction Manager shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the Subcontractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction. The Construction Manager is to provide to the Owner a schedule of all categories of Work that it recommends to be separately bid, along with the estimated cost of each. Efforts shall be made to avoid unnecessary Contractor to Subcontractor relationships, along with their resultant pyramiding Contractor mark-up costs, when such are not beneficial for the Owner.

§ 2.1.11 The Construction Manager, in conjunction with the Architect, shall advise the Owner as to building and special permits required for the Project and shall obtain such building permits and special permits for permanent improvements. The Construction Manager shall assist the Owner and Architect in filing documents required for the approvals of governmental authorities having jurisdiction over the Project. The Owner shall have the final authority as to which governmental authorities have jurisdiction over the Project as well as the extent to which they have jurisdiction over the Project. As such, the Construction Manager shall only file with governmental authorities the documents the Owner concurs should be first.

§ 2.2 Guaranteed Maximum Price (GMP) Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and approval. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4 and 3.1.4.6, all Construction Manager's personnel and general condition items, and the Construction Manager's Fee.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;

- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, all Construction Manager's personnel and general condition items and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Following the Owner's approval of the Construction Documents, the Construction Manager shall update and submit the latest estimate of Construction Cost and the Project construction schedule for the Architect's review and the Owner's approval.

§ 2.2.4.1 Unless agreed by the Construction Manager or otherwise provided in the Contract Documents, such contingency is not for use by the Owner for reasons including scope increases or design changes. Construction Manager's contingency shall not be used to cover items resulting from the Construction Manager's negligence or to cover Construction Manager's General Condition items. It is further understood and agreed that such contingency shall be the maximum amount available, and may only be used for the following: (i) items of Work within the scope of this Agreement but due to Construction Manager's error failed to be included in a Subcontract; (ii) additional costs incurred as a result of a failure of a bidder to whom a portion of the Work is awarded in accordance with the Contract Documents to enter into a subcontract with the Construction Manager; (iii) unanticipated market conditions and labor and material conditions; (iv) casualty losses and related expenses uncompensated by insurance or otherwise and sustained by the Construction Manager in connection with the Work, except to the extent such losses or expenses are attributable, in whole or in part, to the Construction Manager's error or omission; (v) costs arising from default of unbonded and uncollectible Subcontractor; and (vi) subcontract buyout errors. The Construction Manager shall first submit to the Owner for approval a written request for a specific amount and justification for its use if time permitting, report use of such contingency on the Construction Manager's monthly report and submit contingency cost item or items, clearly described, with the corresponding Application for Payment. Construction Manager shall forfeit contingency amount committed or used if failed to report and to submit for payment after two subsequent monthly Applications for Payment.

§ 2.2.4.2 The purpose of Construction Manager's contingency is to cover the above described unanticipated costs. Therefore, incidents of unanticipated costs should reduce as the Project progresses towards completion. The Construction Manager shall return to the Owner portions of such contingency according to the following schedule unless contingency expenditure at the following Project milestone of construction exceeded the then scheduled amounts:

At 50% of Payment Request	Fifty Percent (50%)
At Substantial Completion	One Hundred Percent (100%)

§ 2.2.4.3 Unless otherwise provided in the Contract Documents or agreed by the Owner in writing, the Construction Manager shall return (release) all unused contingency and allowance amounts to the Owner at Substantial Completion.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal that includes a written statement of its basis. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to make the revisions to the Drawings and Specifications to the extent necessary to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect, and Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.2.10 NOT USED

§ 2.2.11 The Construction Manager's contingency as stated in Section 2.2.4 shall be equal to no more than five percent (5%) of the estimated Cost of the Work before any of the Work has been bid or bought out. The amount of Construction Manager's contingency shall commensurately be reduced with the amount of the Work being bought out. When the Guaranteed Maximum Price is established, with ninety percent (90%) or more of the Work bought out by the Construction Manager, the Construction Manager's contingency amount shall be reduced to no more than two percent (2%) of the GMP amount.

§ 2.2.12 STORAGE OF MATERIALS AND EQUIPMENT. The Construction Manager shall accept receipt of materials and equipment purchased by the Owner, provide storage and protection for materials and equipment until turned over to the separate contractors for installation.

§ 2.2.13 LABOR RELATIONS. The Construction Manager shall make recommendations and provide assistance as necessary for the developing and administering of an effective labor relations program for the Project in order to ensure labor harmony and the avoidance of labor disputes during construction. (*reference AIA A201 section 3.4*)

§ 2.3 Construction Phase

§ 2.3.1 General

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

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

§ 2.3.2 Administration

§ 2.3.2.1 The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Subcontractors with each other and with those of the Construction Manager, the Owner and the Architect to manage the Project in accordance with the latest approved estimate of Construction Cost, the Project Schedule, and the Contract Documents. Such duties shall include verification that all necessary submittals of the Contractors, including but not limited to insurance certificates and performance payment bonds, are timely received from the Contractors. The Construction Manager shall provide sufficient organization, personnel, and management to carry out the requirements of this Agreement. The Owner reserves the right, in its sole discretion, to remove or change any of the Construction Manager's personnel, provided the request is made in good faith and for cause. Prior to actual removal and/or substitution, the Owner shall notify the Construction Manager of its intent to remove such employee, and the Construction Manager shall replace such employee as soon as reasonably possible with an employee which the Owner deems acceptable.

§ 2.3.2.1.1 The Construction Manager shall conduct bidding so as to achieve maximum competition among qualified bidders in order to obtain the lowest responsible bidder for acceptable Work. Therefore, competitive bidding by formal advertising ("Formal Advertising") shall be the method of contracting unless otherwise approved by the Owner, in writing. (*Also see Section 11.5.12*)

Formal Advertising shall entail:

- a. Preparation of the invitation for bids describing the building design and Specifications clearly, accurately, and completely, but avoiding unnecessarily restrictive Specifications which might unduly limit the number of bidders;
- b. Publicizing the invitation for bids through distribution to prospective bidders, in accordance with MCLA §1267, and such other means as may be appropriate, in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening of bids; and
- c. Awarding the contract, after sealed bids are publicly opened, to the lowest responsible bidder.

§ 2.3.2.1.2 The Construction Manager shall serve in the Owner's best interest without any conflict of interest. In particular the Construction Manager nor any firm in which a principal (i.e., over 10%) stockholder or member of the construction team has a financial interest, shall, during the term of this Agreement, make or cause to be made any bid for Work of the Project. Notwithstanding the foregoing, however, if the low bid for any bid package exceeds the Construction Manager's budget line item price for such package, or if less than three (3) bids are received in response to the advertisement of any bid package, with the Owner's written approval, one of the following procedures shall be followed:

- a. The Construction Manager shall reject all bids and issue a revised invitation; or
- b. The Construction Manager shall award to the low bidder for a price above the budget line item.

§ 2.3.2.1.3 The Owner shall be responsible for approving awards of all contracts after evaluation and recommendation by the Construction Manager and concurrence of the Architect. After Owner's approval the Construction Manager shall enter into the separate contracts as required to provide all labor and materials for the construction of the Project.

§ 2.3.2.1.4 Intentionally Deleted

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, and the Construction Manager has confirmed that such bidder is the lowest responsible bidder, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 The Construction Manager shall not recommend a specific bidder that is considered a "related party" according to Section 6.10.

§ 2.3.2.5 The Construction Manager shall schedule and conduct not less than biweekly meetings at which the Owner, Architect, Construction Manager, and appropriate Subcontractors can discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect, for their review and approval, a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007. The Construction Manager shall update the Project construction schedule at least monthly, or as otherwise agreed to by the Owner, incorporating the activities of the Subcontractors on the Project, including activity sequences and durations, allocation of labor and materials, processing

of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time and procurement. The Project construction 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 construction schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner in writing, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 Acknowledging the Owner's status as a public body, and unless otherwise provided for under this Agreement, the Owner shall provide information requested by the Construction Manager in writing with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability, Owner-furnished equipment or furniture, move-in schedule, and site requirements. The Construction Manager will notify the Owner when any such information that is time sensitive along with a reasonable time frame for the receipt of same. However, the failure by the Owner to furnish any information to the Construction Manager shall not relieve the Construction Manager of any liability hereunder, nor extend the time in which the Construction Manager is to perform such duties unless the Construction Manager notifies the Owner in writing that the lack of such information may impede the progress of the Project.

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

§ 3.1.3 The Owner has provided a budget for the Project, which budget has been shared with both the Architect and Construction Manager, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other

information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections, and reports which the Construction Manager or the Architect advise the Owner are required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Construction Manager and Architect, as part of its Basic Services, will oversee such tests and inspections which tests, inspections and reports shall be paid for by the Owner.

§ 3.1.4.2 When necessary for the Project and requested by the Architect or Construction Manager in writing, the Owner shall furnish, with assistance from the Architect and Construction Manager, surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures, designated wetlands, adjacent drainage, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site, locations, dimensions and necessary data with respect to existing buildings, other improvements and trees, and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Notwithstanding the foregoing, Owner, may, at its option, require Construction Manager to obtain such surveys (and same shall be included in the Cost of the Work). Construction Manager shall be responsible for independently confirming the location of utility lines and exercising due caution related thereto.

§ 3.1.4.3 When necessary for the Project and requested by the Architect or Construction Manager in writing, the Owner shall furnish, with assistance from the Architect and Construction Manager, services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 3.1.4.5 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.

§ 3.1.4.6 The Owner, in its sole discretion, shall work with the Architect and the Construction Manager in determining how the contingency allocated for the Project shall be utilized.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's designated representative shall render decisions within a reasonable period of time and furnish information within a reasonable period of time, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's designated representative. The Owner's designated representative is: *(Insert Name, legal status, address and other information)*

Lisa Abbey, Deputy Superintendent for Business and Operations
Grosse Pointe Public School System
389 St. Clair
Grosse Pointe, Michigan 48230

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101™-2017, Standard Form of Agreement Between Owner and Architect, as modified, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

§ 3.4 Owner's Representative Consultant (Program Manager)

The Owner has engaged Plante & Moran Cresa, LLC (PMC) as Owner's Representative Consultant on the Project to assist the Owner with the management and/or coordination of the Project. The Construction Manager shall keep the Owner and PMC informed in matters regarding the Project. Unless otherwise provided in this Agreement, Contract Documents, or specifically authorized by the Owner, the Owner's Representative Consultant is not authorized to commit the Owner in matters regarding changes in the Work, Construction Schedule, or grant approvals on behalf of the Owner. The Owner and/or the Owner's designated representative have the sole right to make decisions in matters regarding the Project. The following individual, subject to change upon written notification from the Owner to the Construction Manager, shall be the primary contact for the Owner's Representative Consultant: *(Insert Name, legal status, address and other information)*

Robert Stempien, Sr. Vice President
Plante & Moran Cresa, LLC
27400 Northwestern Highway
Southfield, MI 48034
Telephone (Direct Dial): 248 603-5252
e-Mail Address: robert.stempien@plantemoran.com

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

«Compensation for Preconstruction Phase Services shall be on an hourly basis using the Construction Manager's Personnel Costs proposed on _____, and amended on _____, of Construction Manager's personnel directly engaged on the Project. The maximum compensation for Preconstruction Phase Services, including all Reimbursable Expenses shall not exceed _____ dollars (\$_____).»

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « » (« ») months from the date of the sale of the Bonds and, if sold in separate series, from the date of the sale for that particular series, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted, in writing, as mutually agreed to in writing by the parties.

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

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed to by the parties in writing, payments for services shall be made monthly following presentation of the Construction Manager's invoice in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid «forty-five» («45») 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.)

Zero percent (0%) per annum.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee:

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

«Compensation for Construction Phase Services (including without limitation Work that is subject to Change Orders or Construction Change Directives), covering Contractor's overhead and profit, shall be _____ percent (____%) of the actual Cost of the Work. At the conclusion of Design Development Phase and upon Owner receiving and approving the Construction Manager's Design Development estimate for the Project, the Owner and Construction Manager may mutually agree to fix a lump sum compensation for the Construction Manager based on the above stipulated percent of the accepted Design Development estimate. If lump sum compensation is fixed, the Construction Manager shall not be entitled to additional fees for and on Field Work Directives, Change Orders, etc., unless the scope of the Project is substantially increased by the Owner. If the scope of the Project is substantially increased by the Owner, Construction Manager's fee shall be equitably adjusted, in writing, as agreed between the Owner and Construction Manager.»

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

«See Paragraph 5.1.1 above. »

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

«As set forth in the awarded bid and/or the relevant trade contract. If increased payment amounts are not addressed therein, a Subcontractor's overhead and profit shall not exceed ten percent (10%) on the changed work, labor, equipment and material of a primary tier Subcontractor or five percent (5%) on the changed work, labor, equipment and material of a lower tier subcontractor. In no event shall the total cost of any change in the work exceed the amount of the required Change Order or Construction Change Directive related to same. »

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed «seventy-five» percent («75»%) of the equipment rental cost published in the current EquipmentWatch Rental Rate Blue Book. For Construction Manager owned equipment, the aggregate equipment rent charges for any single piece of equipment used in all change order work shall be limited to fifty percent (50%) of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment.

§ 5.1.5 Unit prices, if any:

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

Construction Manager shall set forth unit prices in the Guaranteed Maximum Price Amendment.

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

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, which Amendment will be incorporated herein by reference and attached as **Exhibit A**, once mutually agreed to by the parties as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

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

«The Construction Manager shall organize and direct the complete construction of the Project within the Guaranteed Maximum Price. »

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

§ 5.3 Changes in the Work

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

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

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

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

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean actual costs necessarily incurred by the Construction Manager, without mark-up, in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

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

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops. (*Also see 6.2.7 below*)

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

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

Wages or salaries of Construction Manager's project cost accountant(s) for that portion of their time required for the Work though said personnel may not be stationed at the site.

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or support personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 NOT USED

§ 6.2.6 Compensation for Construction Manager's workers and personnel during Construction Phase Services shall be on an actual cost basis, without mark-up, of Construction Manager's personnel directly engaged on the Project. The maximum personnel cost for Construction Phase Services, including all Reimbursable Expenses and General Condition items, shall not exceed the amount stipulated in the Guaranteed Maximum Price Amendment for Personnel and Reimbursable Expenses within the Guaranteed Maximum Price Amendment. General Condition items obtained by the Construction Manager shall be provided to the Owner, at cost, without any mark-up.

§ 6.2.7 NOT USED

§ 6.3 Subcontract Costs

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

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

§ 6.4.1 Actual costs, without mark-up, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Actual costs, without mark-up, of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

§ 6.5.1 Actual costs, without mark-up, of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Actual rental charges, without mark-up, for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval. *(Also see Section 5.1.4)*

§ 6.5.3 Actual costs, without mark-up, of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Actual costs, without mark-up, of document reproductions, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, subject to the Owner's prior written approval.

§ 6.5.6 Actual costs, without mark-up, of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for Payment and Performance Bonds, at cost without any mark-up, required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval.

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

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

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

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

§ 6.6.6 Actual costs, without mark-up, for electronic equipment and special software, directly related to the Work with the Owner's prior written approval. *(Also see Section 6.8.1.9)*

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

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

§ 6.6.9 Subject to the Owner's prior written approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work. Owner shall not be required to pay or reimburse Construction Manager for relocation and temporary living allowances of personnel required for the Work unless such relocation meets the "distance test" under U.S. Internal Revenue Publication 521.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other actual costs, without mark-up, incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Actual costs, without mark-up, incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Except as required by Paragraph 11.5.8, actual costs, without mark-up, of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.2.2 and 6.2.3, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner in writing, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase;
- .9 Computers (desktop, laptop, tablet, etc.) and software unless such are acquired solely, not partially or substantially, for the beneficial use of the Project, and computers may not contain other unrelated Project or personal data unless otherwise specifically approved by Owner in writing;
- .10 Corporate accounting, data and check processing, and similar business transaction related costs related to the Work are part of Construction Manager's overhead business expenses and should have been included in Construction Manager's Fee;
- .11 All taxes, except for sales or use taxes (Ref. Section 6.6.2), including, but not limited to, Federal, State, or Local Business Tax, Franchise Tax, Commercial Activities Tax, or similar taxes are the responsibility of the Construction Manager and the Owner shall not pay or reimburse the Construction Manager for such tax obligations, except that the parties acknowledge that taxes associated with the Project/Work will be included in the Guaranteed Maximum Price based upon the bids received from Subcontractors;
- .12 Consultants to the Construction Manager not previously approved in writing by the Owner; and
- .13 Unless otherwise provided in the Agreement, Owner shall not reimburse the Construction Manager for rental charges more than two (2) weeks prior to and one (1) week after such temporary facilities, machinery, and equipment that are needed to be used directly in the Work.

§ 6.9 Discounts, Rebates and Refunds

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

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

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate, or other entity having common ownership or management with the Construction Manager, any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent (10%) in the aggregate, or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

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

incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

§ 6.11.1 The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of seven (7) years after final payment, or for such longer period as may be required by law.

§ 6.11.2 Owner's designated representative or designee shall have reasonable access to the Construction Manager's facilities, shall be permitted to interview all current or former employees to discuss matters pertinent to the performance of this Agreement and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

§ 6.11.3 If an audit inspection or examination in accordance with this article discloses overcharging, or inappropriate charges of any nature by the Construction Manager to the Owner that is in excess of one-half percent (0.5%) of the total contract billings, the Construction Manager shall reimburse the Owner the actual cost of Owner's audit expenses in addition to making adjustments for over and/or inappropriate charges. Adjustments and/or payments that must be made as a result of any such audit or examination of the Construction Manager's invoices and/or records shall be made within sixty (60) days from presentation of Owner's findings to Construction Manager.

§ 6.11.4 When the Project consists of two or more major components – e.g., buildings, phases, etc., the Construction Manager shall maintain separate accounting records for each major component of the Project; including necessary proration of costs for shared expenses.

§ 6.11.5 When the Owner of the Project consists of two or more obligating groups, the Construction Manager shall maintain separate accounting records for each obligating group of the Project; including necessary proration of costs for shared expenses.

§ 6.11.6 When the Owner issues two or more series of Bonds to fund the cost of the Project, the Construction Manager shall maintain separate accounting records for each series of Bonds for the Project; including necessary proration of costs for shared expenses.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

«Ending on the fifteenth (15th) day of each month.»

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the «last» day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the «last» day of the «following» month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than «forty-five» («45») days after the Architect receives the Application for Payment.

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

§ 7.1.3.1 NOT USED

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

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in writing and in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of «ten» percent («10»%). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of «ten» percent («10»%) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Provided however, that when the Architect determines, and the Owner confirms, that the Work by the Subcontractor is at minimum fifty percent (50%) complete, payments made thereafter shall be subject to retainage of five percent (5%) and the Owner shall release a portion of held retainage to the Subcontractor so as to reduce such amounts to five percent (5%) of such prior payments. Irrespective of the foregoing, if Owner determines in its sole discretion that performance of the Work has not progressed in a timely manner or otherwise has not been performed as required by the Contract Documents, the Owner

may elect to continue to subject future payments for the Work on the Project, or as applicable, the Work of any particular Subcontractor, to retainage of ten percent (10%) and not release any portion of retained amounts as provided above.

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

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

§ 7.1.11 Construction Manager's first Application of Payment is considered incomplete unless in addition to the requirements described in Sections 7.1.1 through 7.1.8 and AIA® A201™—2007 Article 9.3.3, all of the following completed items are also included with the Application of Payment: (1) Performance and Payment Bonds, if required; (2) Certificate of Insurance, as required; (3) Affidavits that the surety and insurance company or companies meets the requirements in AIA® A201™—2007 Article 11.7; (4) CPM Schedule for the Project; (5) Completed Schedule of Values for the Project.

§ 7.1.12 Notwithstanding Section 7.1.3 above, the Owner shall have the right to withhold sufficient amount from the Application for Payment for unacceptable, defective, deficient, or non-conforming Work ("Disputed Work") after notifying the Construction Manager. The Construction Manager shall promptly remedy the Disputed Work. Owner shall promptly render payment for such Disputed Work after the Construction Manager has cured and the Owner has accepted the remedied Disputed Work.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect and accepted by the Owner.

The Owner's final payment to the Construction Manager shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment and accepted by the Owner.

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven (7) days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within thirty (30) days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this thirty (30)

day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

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

§ 7.2.6 The Owner shall have the right to deduct from the Final Payment due the Construction Manager all costs, including additional fees paid to Owner's consultants, which the Owner incurred as result of and attributed to Construction Manager's failure to fully complete and/or closeout the Project within sixty (60) days following Substantial Completion. (See A201™-2007 Articles 9.8 and 9.10)

§ 7.2.7 Unless otherwise agreed to by the Owner, in writing, the Owner shall not be responsible for costs incurred by the Construction Manager beyond sixty (60) days following Substantial Completion for the Contract Sum that is based on the Cost of the Work plus Construction Manager's Fee.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth below, in Article 11 of AIA Document A201-2007, and as set forth in **Exhibit F** attached hereto.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

§ 8.1 INSURANCE

§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as set forth in Article 11 of AIA Document A201-2007 and in Exhibit A – Guaranteed Maximum Price Amendment, as modified.

§ 8.1.2 Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards) as set forth in Article 11 of AIA Document A201-2007 and in Exhibit A – Guaranteed Maximum Price Amendment, as modified .

- .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
- .2 Products and Completed Operations insurance shall be maintained for a minimum period of at least two (2) years after final payment.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Article 11 of AIA Document A201™-2007.

§ 8.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage as set forth in Article 11 of AIA Document A201-2007 and in Exhibit A – Guaranteed Maximum Price Amendment, as modified.

1. General Requirements

- a. Workers' Compensation
- b. Employer's Liability

Statutory
Established by Owner

2. Comprehensive General Liability

a. Bodily Injury	\$1,000,000	Each Person
	\$1,000,000	Each Occurrence
b. Personal Injury	\$1,000,000	Aggregate
	\$2,000,000	General Aggregate
3. Automobile Liability		
a. Bodily Injury	\$1,000,000	Each Person
	\$1,000,000	Each Occurrence
b. Property Damage	\$1,000,000	Each Occurrence
4. Independent Contractors	\$1,000,000	Each Occurrence
5. Products and Complete Operations	\$1,000,000	Each Occurrence for one (1) year, commencing with issuance of the Final Certificate for Payment
6. Contractual Liability	\$1,000,000	Each Occurrence
7. Excess Umbrella Liability	\$4,000,000	Each Occurrence
	\$4,000,000	Aggregate
8. Professional Liability Insurance	\$2,000,000	Each Wrongful Act
	\$2,000,000	Policy Aggregate
9. Other (specify):	\$1,000,000	Each Pollution Event
Pollution Liability	\$2,000,000	Policy Aggregate

In addition, Contractor shall provide insurance which includes the following terms and conditions:

General Liability

- Owner, its consultants and their respective directors, officers and employees shall be additional insureds for operations per ISO CG 20 10 10 01, or its equivalent.
- Owner, its consultants and their respective directors, officers and employees shall be additional insureds for completed operations per ISO CG 20 37 10 01, or its equivalent.
- Contractor shall have its insurer amend the policy to provide that Contractor's general liability shall be primary and without contribution from each additional insured's insurance policies.
- Contractor and its insurers shall provide a Waiver of Subrogation as to each additional insured.
- Completed operations insurance and additional insured status shall be maintained for a period of no less than three (3) years after final completion of the Work under this Agreement.

Umbrella / Excess Liability

- Owner, its consultants and their respective directors, officers and employees shall be additional insureds for operations.
- Owner, its consultants and their respective directors, officers and employees shall be additional insureds for completed operations.
- Contractor and its insurers shall provide a Waiver of Subrogation as to each additional insured.
- Completed operations insurance and additional insured status shall be maintained for a period of no less than three (3) years after final completion of the Work under this Agreement.

Automobile Liability:

- Insurance shall apply to all owned, non-owned, hired and borrowed vehicles.
- Owner, its consultants and their respective directors, officers and employees shall be additional insureds.
- Contractor and its insurers shall provide a Waiver of Subrogation as to each additional insured.

Professional and Pollution Liability:

- Contractor may combine these insurance requirements into one shared limit of liability of not less than \$2,000,000
- Contractor shall notify Owner of any material impairment of limits available under the policies.

Additional Requirements:

- Contractor shall require all Contractors, Subcontractors, and/or their agents to maintain the insurance requirements set forth between Owner and Contractor except:
 - Umbrella / Excess Liability Insurance shall not be less than \$1,000,000;
 - Professional Liability is not required unless contractor or agent is an architect, engineer or similar consultant;
 - Pollution liability is not required unless contractor, subcontractor or engineer/consultant provides services related to environmental, including, but not limited to, asbestos, lead, or mold remediation.

Construction Manager shall require all contractors, subcontractor and/or their agents to name the Owner, its Owner Representative Consultant and their respective directors, officers, and employees as additional insureds as forth in insurance requirements between Owner and Contractor.

§ 8.2 PERFORMANCE BOND AND PAYMENT BOND

§ 8.2.1 The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

§ 8.2.2 The Construction Manager shall deliver the required bonds to the Owner at least three (3) days before the commencement of any Work at the Project site and the Owner must be named as obligee on the Bonds.

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

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Performance Bond	100% of the total value of this Agreement, including all costs of Articles 4 and 5 and Sections 6.1 -6.7.
Payment Bond	100% of the total value of this Agreement, including all costs of Articles 4 and 5 and Sections 6.1 -6.7.

In the event the Construction Manager shall require a responsive and qualified subcontract bidder to provide a supplement bond, the Construction Manager shall be responsible for the cost of that supplemental subcontractor bond from its own funds and not as a part of the Cost of the Work and shall hold the Owner harmless from that cost. For purposes of this provision, a bidder will be presumed to be a 'qualified subcontract bidder' unless the Construction Manager reasonably objects to that bidder on the basis of its qualifications and identifies that in writing to the Owner prior to bid award. The inability of the subcontractor to obtain bonding on its own is not, by itself, a sufficient basis to deem the subcontractor unqualified, acknowledging that allowing such subcontractors to bid on this Project was a

primary consideration of the Owner and Construction Manager in pursuing the "constructor" method of project delivery.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 On those occasions when a dispute arises between the parties to this Agreement, the parties shall be compelled to seek an alternative means of resolving the dispute as a condition precedent to litigation. Therefore, the parties agree to the following terms and conditions: For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

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

[☐] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[☒] Litigation in a court of competent jurisdiction, unless otherwise mutually agreed to by the parties.

[☐] Other: *(Specify)* ☐

- A. The party bringing a claim shall give notice to the other party and, in writing, propose a meeting within seven (7) days after the claim arises in which to discuss and attempt to resolve the claim.
- B. In the event the meeting between the parties to resolve the claim does not resolve the dispute or does not take place within said seven (7) day period, the parties shall designate, by mutual agreement, an independent mediator who shall convene a meeting of the parties within a period of fourteen (14) days of the later of the initial meeting between the parties or the date notice was given pursuant to Paragraph 9.2A. The mediator shall render his/her decision within seven (7) days of said meeting.
- C. The purpose of the mediation is to attempt to resolve the dispute between the parties. The Mediator shall not be empowered with the authority to render a binding opinion or award.
- D. In the event the independent mediator's attempt to resolve the dispute between the parties fails, then each party will be free to pursue recovery of claims at law.
- E. During the pendency of this alternative dispute resolution process, the parties agree that the statute(s) of limitations applicable to all claims that are the subject of this process shall be tolled.

§ 9.3 Initial Decision Maker

Unless otherwise provided in writing, the Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager, with the Owner's prior written approval prior to execution of the Guaranteed Maximum Price Amendment, will contain provisions allowing for assignment to the Owner as described above.

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

§ 10.3 Suspension

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

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

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

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. *(Also see Section 11.5.13 for Assignment to Trustee requirements)*

§ 11.5 Other provisions:

«§ 11.5.1 In the event of any inconsistency or ambiguity between this Agreement and AIA Document A201, the terms that requires a higher standard of performance by the Construction Manager shall govern.

§ 11.5.2 CONSTRUCTION MANAGER'S FIELD PERSONNEL AND MANAGEMENT CONTROL SYSTEM

§ 11.5.2.1 The Construction Manager shall provide a qualified daily full-time, on-site field superintendent(s) to supervise the Project during the entire Construction Phase. The Owner reserves the right to approve the identity of the Construction Manager's field superintendent(s), and to require the replacement of field superintendent(s) upon two (2) weeks' notice.

§ 11.5.2.2 The Construction Manager shall establish organization and lines of authority required to carry out requirements of this Agreement to organize and direct the complete construction of the Project. The services to be performed hereunder shall be performed by the Construction Manager's own personnel, unless otherwise authorized by the Owner. The employment of, contract with, or use of the services of any other person or firm by the Construction Manager, as consultant or otherwise, shall be subject to the prior written approval of the Owner. Such approval shall not be construed as constituting an agreement between the Owner and any such person or firm.

§ 11.5.2.3 The Construction Manager shall prepare and publish a field operations guide for implementing and administering of the Work to be performed under the terms of this Agreement. The guide shall include, but not be limited to, the following data: directory of personnel, correspondence, reports and records, inspection procedures, shop drawing submittal, testing laboratories procedures, contract changes, extensions of time, progress payments, final acceptance procedures, instructions regarding safety, worker behavior, and use of the Project site.

§ 11.5.2.4 The Construction Manager shall implement a management control system for the design and construction of the Project using both guide and automated procedures to support such functions as planning, organizing, scheduling, budgeting, reporting construction progress and expenditures, accounting, documentation, identifying variances and problems, decision making, and decision implementation. The data provided by the management control system must be timely, must be responsive to the needs of management at all levels, and must be fully capable of providing a sound basis for management decisions. The Owner plans to utilize on the Project a construction program management data platform – i.e., Trigent Sharepoint™, e-Builder™, etc., to provide document control, RFI, Change Orders, Applications for Payment, lien waivers, project budget and invoices, project schedule, and project cost-to-complete, etc. The Construction Manager shall cooperate with the Owner to ensure full [electronic format] compatibility to properly upload the Construction Manager's Project management control system data onto the Owner's platform and to interact collaboratively with the Owner and its consultants via the platform.

§ 11.5.3 The Construction Manager shall, upon completion of the Project, deliver to the Owner all records and files of the Project, which shall have been organized in a reasonable manner by the Construction Manager.

§ 11.5.4 The Construction Manager shall inspect the Work of each Subcontractor on the Project as it is being performed until final completion and acceptance of the Project by the Owner to assure that the Work performed and the materials furnished are in accordance with the Contract Documents and that Work on the Project is progressing on schedule.

The Construction Manager shall determine in general that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents, and guard the Owner against defects and deficiencies in the Work. In order to make such determination, the Construction Manager shall inspect the site and Work as often as necessary and appropriate to the stage of construction, to familiarize the Construction Manager with the progress and quality of the Work and to determine for the Owner's benefit and protection if the Work is proceeding in accordance with the Contract Documents and construction schedule. For purposes of this Agreement, the term "inspect" shall be defined as the evaluation of construction and materials used therein, sufficient to permit the Construction Manager to render his or her professional opinion as to the Work conforming to the Contract Documents.

In the event that the quality control testing should indicate that the Work, as installed, does not meet the requirements of the Project, the Architect shall determine the extent of the Work that fails to meet the requirements and the Construction Manager shall advise the Owner of the corrective action and direct the Subcontractors(s) to take appropriate corrective action.

§ 11.5.5 The Construction Manager shall conduct a post-occupancy audit eleven (11) months and twenty three (23) months following the Date of Substantial Completion and thereafter provide call-back services for a period of twenty four (24) months.

§ 11.5. NOT USED

§ 11.5.7 NOT USED

§ 11.5.8 Section 6.7.3 shall not apply if the defects or deficiencies in the Work of the Contract are of such a nature that they should have been observed by the Construction Manager so that the Cost to be Reimbursed would not have been necessary.

§ 11.5.9 The Request for Proposal dated December 20, 2018, including any addenda (collectively the "RFP") and the Construction Manager's Proposal dated _____ and amended on _____, are attached hereto by reference and is incorporated herein. In the event of any inconsistency or ambiguity between this Agreement, the RFP, and the Construction Manager's Proposal and representations, the terms that require a higher standard of performance by the Construction Manager shall prevail.

§ 11.5.10 During Preconstruction Phase, the Construction Manager shall provide Construction Cost estimates within the standard of care required for similar projects and prescribed herein. The Construction Cost estimates must not mislead the Owner and the Architect in planning of the Project. In the event that the Construction Manager's estimate of construction cost is substantially different from the lowest bona fide bids or negotiated proposal - that is, with more than ten percent (10%) variance, and if re-design is desired by the Owner in order to bring the Project closer to the Project budget, the Construction Manager shall bear the necessary re-design cost. However, the Construction Manager is permitted to include reasonable allowances for design, bidding, price escalation, to advise the Architect in determining which materials, equipment, component systems and types of construction are to be included, and to solicit and include alternate bids in order to adjust the bids to be within the stipulated variance.

§ 11.5.11 INITIAL ENGAGEMENT. Initial engagement of the Construction Manager is for Pre-Construction Services only. In addition to any other rights of termination, The Owner reserves the unconditional right to, in its sole discretion, terminate this Agreement at the conclusion of Pre-construction Services and/or solicit proposals from other Construction Managers or contractors for construction of the Project. In the event of such termination by Owner, Owner's sole liability, pursuant to this Agreement or otherwise at law or in equity, shall be payment for Pre-construction Services actually performed, subject to the terms and conditions set forth in Article 4 and Article 10 of this Agreement.

§ 11.5.12 NOT USED

§ 11.5.13 ASSIGNMENT TO TRUSTEE.

§ 11.5.13.1 NOT USED

§ 11.5.13.2 SURETY BONDS. The Construction Manager shall provide to the Owner on or prior to the date of Notice to Proceed a surety bond or bonds naming the Owner as obligee covering (i) performance of the Contract Documents, including coverage for correction of defects developing within two (2) years after completion and acceptance, and (ii) payment for labor and materials. The bond or bonds shall be executed by responsible surety companies qualified to do business in the State and shall be in amounts aggregating not less than one hundred percent (100%) of the Contract Sum. (*Reference: Section 8.2*)

§ 11.5.14 LIQUIDATED DAMAGES

§ 11.5.14.1 NOT USED

§ 11.5.14.2 NOT USED

§ 11.5.14.3 NOT USED

§ 11.5.15 The Construction Manager's Designated Representatives and key team members are:

(List of key personnel members assigned to the Project and their respective roles)

Team Member	Assignment	Contact Information – Mobile Phone & e-Mail
-------------	------------	---

Construction Manager agrees to commit the above listed key team members throughout the duration of the Project. The services of the Construction Manager are deemed to be personal in nature as to these key team members and that the continuity in the Project's team is valuable to the Owner and that damages due to the disruption to the continuity of the Project team is extremely difficult if not impossible to ascertain. Construction Manager shall promptly notify the Owner if services of any one of the listed team members become unavailable due to circumstances beyond the Construction Manager's control – e.g., extended illness or disability, death, or termination of employment, etc. Owner shall have the right to interview and select alternate team member(s) employed by the Construction Manager to replace the unavailable team member. Construction Manager shall agree to provide the services of the alternate team member(s) selected by Owner. Construction Manager is not entitled to additional compensation for any such substitution(s) of the Project team members.

§ 11.5.16 NOT USED

§ 11.5.17 The Owner, being a public body, shall render required decisions within a reasonable time after being requested to do so by the Construction Manager. The Construction Manager, assisted by the Architect, shall prepare and submit all recommendations for which approval is required by Owner as soon as reasonably possible unless another schedule is agreed to by the Owner, in writing. The Construction Manager shall not cause unreasonable delays in the orderly progress of work. (*Reference: Section 3.2*)

§ 11.5.18 GOVERNMENT AGENCY'S IMMUNITY FROM TORT LIABILITY. Notwithstanding any provisions within the Contract Documents, no provisions shall be deemed a waiver of any immunity granted the Owner, being a governmental unit, by statute, including, without limitation. (*MCL 691.1407*)

§ 11.5.19 INDEMNIFICATION. The Construction Manager shall indemnify, defend and hold harmless the Owner, its Board of Education, its Board Members, in their official and individual capacities, its administrators, employees, agents, contractors, successors and assignees, from and against any and all claims, counter claims, suits, debts, demands, actions, judgments, liens, costs, expenses, damages, injuries and liabilities, including actual attorney's fees and actual expert witness fees arising out of or in connection with Construction Manager's performance of the services pursuant to this Agreement and/or from Construction Manager's violation of any of the terms of this Agreement, including, but not limited to: (a) the negligent acts or willful misconduct of the Construction Manager, its officers, directors, employees, successors, assignees, Contractors, Subcontractors, Consultants and agents; (b) any breach of the terms of this Contract by the Construction Manager, its officers, directors, employees, successors, assignees, Contractors, Subcontractors, Consultants and agents; (c) any violation or breach of any applicable Federal, State or local law, rule, regulation, ordinance, policy and/or licensing and permitting requirements applicable to providing the services; or (d) any breach of any representation or warranty by the Construction Manager, its officers, directors, employees, successors, assignees, Contractors, Subcontractors, Consultants and agents under this Agreement. The

Construction Manager shall notify the Owner by certified mail, return receipt requested, immediately upon actual knowledge of any claim, suit, action, or proceeding for which the Owner may be entitled to indemnification under this Agreement. This Section shall survive the expiration or earlier termination of this Agreement and shall not be limited by the Construction Manager's Insurance obligations contained in this Agreement. The Owner, being a governmental unit, is sheltered by the Michigan Void Construction Contracts Act, Act 165 of 1966, an Act that invalidates certain requirements for indemnity in the construction industry. (MCL §691.991, Sec. 1)

§ 11.5.20 The Construction Manager shall, upon completion of the Project, deliver to the Owner all close-out documents including, but not limited to, As-Built drawings, equipment manuals, warranties, and similar submittals of the Project which shall have been organized in a reasonable manner by the Construction Manager.»

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended for the Project;
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, as amended for the Project;
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed;
- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed; and
- .5 Other documents:

(List other documents, if any, forming part of the Agreement.)

«Exhibit A - Guaranteed Maximum Price Amendment, as modified

Exhibit B - Preconstruction Scope of Services

Exhibit C - Travel and Business Expense Policy

Exhibit D - Phasing and Milestone Schedule

Exhibit E - Detailed Description of the Project for the 2018 Bond Election

Exhibit F – Construction Manager's Insurance Certificates and Copy of Insurance Policy

Exhibit G – Construction Manager's Unit and Hourly Rate Schedule

Exhibit H – Menu of Services - Team Responsibility Matrix

§ 12.3 To facilitate execution of this Agreement, the parties may execute this Agreement in counterpart and exchange signatures by facsimile transmission or by electronic delivery of a PDF copy of the executed Agreement, which facsimile or PDF copy shall be deemed valid and binding.

§ 12.4 This Agreement is not effective until it is signed by the Owner and the Construction Manager. The effective date of this Agreement shall be the last date of execution.

OWNER (Signature)

« »« »

(Printed name and title)

Date

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

Date

General Conditions of the Contract for Construction

Editing Template

CAUTION: Take care not to remove or otherwise edit Project Data fill-point areas (Basic Information, Contract Details and Project Team) when making edits to this document.

for the following PROJECT:

(Name and location or address)

«2018 Bond Program»

« »

THE OWNER:

(Name, legal status and address)

«Grosse Pointe Public School System »« »

«389 St. Clair »

«Grosse Pointe, MI 48230 »

THE ARCHITECT:

(Name, legal status and address)

« »« »

« »

« »

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

« »« »

« »

« »

The term “Contractor” shall also mean the Construction Manager, as that term is defined in the Contract.

ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the “Agreement” or “Contract”) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (i) a written amendment to the Contract signed by both parties, (ii) a Change Order, (iii) a Construction Change Directive or (iv) a written order for a minor change in the Work issued by the Architect or the Owner. Unless specifically excluded in the Agreement, the Contract Documents 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 (to the extent it does not conflict with the Owner’s Bid Documents), the Project Manual, or portions of Addenda relating to bidding 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 (i) between the Contractor and the Architect or the Architect’s Consultants, (ii) between the Owner and a Subcontractor or a Sub-subcontractor, (iii) between the Owner and the Architect or the Architect’s Consultants or (iv) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect’s duties.

§ 1.1.3 THE WORK

The term “Work” consists of all goods and services, such as labor, transportation, materials, tools, and equipment (i) to be incorporated into the Project (or the Contractor’s portion of the Project if the Contractor is not responsible for the entire Project), (ii) required of the Contractor under the Contract Documents, or (iii) necessary or appropriate to fully construct, fixture, operate and maintain the Project (or the Contractor’s portion of the Project if the Contractor is not responsible for the entire Project). The Work shall be performed in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project. The term “Work” shall also include labor, materials, equipment and services provided or to be provided by subcontractors, sub-subcontractors, material suppliers or any other entity for whom the Contractor is responsible under or pursuant to the Contract Documents.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE AND PROJECT MANUAL

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. The Project Manual is a volume of documents assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications, Drawings, the Contract and other information furnished by the Owner.

§ 1.1.8 INITIAL DECISION MAKER

Unless otherwise provided in writing, the Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 APPLICABLE LAWS. Applicable Laws means all applicable Federal, State, and local codes, statutes, ordinances, laws (including, but not limited to, the Americans with Disabilities Act ("ADA"), rules and regulations, and lawful orders of all public authorities having jurisdiction over the Revised School Code, MCL 380.1 et seq., the School Building Construction Act, MCL 388.851 et seq., the Stille-Derosett-Hale Single State Construction Code Act, MCL 125.1501 et seq., the Michigan Building Code, and the Project, the Work site, the Work, or the prosecution of the Work.

§ 1.1.10 CONSTRUCTION SCHEDULE. The Construction Schedule is the Critical Path Method ("CPM") schedule for construction of the Work submitted as part of the Contractor's Contract Sum or Guaranteed Maximum Price Proposal, prepared by the Contractor and approved by the Owner, in writing, in accordance with Section 3.10. The Construction Schedule can be modified only by Change Order. Following any such modification, the term "Construction Schedule" shall mean the most recent Owner-approved version.

§ 1.1.11 MILESTONE DATES. The Milestone Dates are those dates included in the Master Design and Construction Schedule and Construction Schedule that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

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

§ 1.1.13 CONSTRUCTION TIME. The Construction Time is the number of calendar days described in the Construction Schedule in which (or, alternatively, the date set forth in the Construction Schedule by which) Substantial Completion shall be achieved, subject to any extensions granted in executed Change Orders or otherwise specifically permitted by the Contract Documents. Any references to Contract time shall be interpreted to mean Construction Time.

§ 1.1.14 ADDITIONAL MEASURES. Additional Measures are corrective measures necessary to expedite the progress of the Work, including (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, (iii) expediting the delivery of materials, and (iv) other similar measures. The Owner shall have the right to order the Contractor to take Additional Measures when it determines that the performance of the Work, as of a Milestone Date, has not progressed to or reached the level of completion required by the Contract Documents, at Contractor's sole cost and expense.

§ 1.1.15 MASTER DESIGN AND CONSTRUCTION SCHEDULE. The Master Design and Construction Schedule is the preliminary schedule for the Work to be developed by the Owner or Contractor during the bidding and negotiation process and which shall, at a minimum, provide for major elements such as preparation of the Design, phasing of construction, the time of commencement and completion required for each anticipated Bid Package.

§ 1.1.16 OWNER DELAY. An Owner Delay means an actual delay to Contractor's completion of the Work to the extent caused by one or more of the following: (i) Modifications (excluding minor changes in the Work and Architect interpretations), (ii) the Owner's failure (or that of any other person for whom the Owner is responsible to the Contractor including, the Architect or a separate contractor hired by the Owner) to provide any data or information requested by the Contractor in writing that is reasonably necessary for Contractor to carry out its duties and is the Owner's obligation to provide (so long as the Owner and any other responsible person are given adequate time to respond); or (iii) unreasonable interference by the Owner or persons for whom it is responsible to the Contractor, including, the Architect or a separate contractor hired by the Owner, with the Contractor's performance of the Work, which is not cured within five (5) business days of written notice to the Owner.

§ 1.1.17 OWNER'S REPRESENTATIVE CONSULTANT (PROGRAM MANAGER). Owner's Representative Consultant or Program Manager means a consultant engaged by the Owner to assist the Owner with the management and/or

coordination of the Project. Unless otherwise provided in the Agreement, Contract Documents, or specifically authorized by the Owner, the Owner's Representative Consultant is not authorized to commit the Owner in matters regarding changes in the Work, Construction Schedule, or grant approvals on behalf of the Owner.

§ 1.1.18 PUNCHLIST. Punchlist means a list of uncompleted or unacceptable items of Work which do not interfere with the use or occupancy of any part of the Work for its intended purpose and which, unless delayed by a need to order materials that could not reasonably have been anticipated by the Contractor, collectively are capable of being completed within sixty (60) days.

§ 1.1.19 VALUE ENGINEERING. Value Engineering means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Owner's program at the lowest cost consistent with required and necessary performance, reliability, quality and safety.

§ 1.1.20 HAZARDOUS MATERIALS. Hazardous Materials shall mean and include any toxic or hazardous materials or substances as defined or regulated by in any U.S. environmental law or any Applicable Laws.

§ 1.1.21 PERMITTED MATERIALS. Permitted Materials shall mean materials that are general supplies and equipment that have a hazardous or potentially hazardous nature and are or will be used for their intended purpose and which do not pose any significant threat of contamination to the Project Site or neighboring properties.

§ 1.1.22 The words "consent," "approved," "satisfactory," "proper," "as directed," any derivatives of them, or similar terms, mean written approval by the Owner, and may include approval of the Architect if the Owner so directs. Except where a different standard is specifically established, the Owner has the right to grant or withhold such approval in its sole discretion.

§ 1.1.23 The word "provide" and any derivatives thereof, and similar terms, mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Contract Documents.

§ 1.1.24 The terms "known," "knowledge," "recognize," "believe," and "discover," and any derivatives thereof and similar terms, when used in reference to the Contractor, shall mean that which the Contractor knows or should reasonably know, recognizes or should reasonably recognize, and discovers or should reasonably discover in exercising the care, skill, and diligence required of the Contractor by the Agreement. The expression "reasonably inferable" and similar terms mean reasonably inferable by a Contractor familiar with the Work and exercising the care, skill and diligence required of the Contractor by the Agreement.

§ 1.1.25 The word "including" shall not be a word of limitation, but instead shall be construed as introducing one or more nonexclusive examples.

§ 1.1.26 Words or abbreviations that are not defined but have well-known technical, trade or construction industry meanings, shall have those meanings ascribed to them. The singular shall include the plural and vice versa. Pronouns are interchangeable. The word "person" includes human beings and recognized legal entities. Unless the context clearly requires otherwise, reference to a Section shall include all subsections beneath it bearing identical introductory numbers.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both. Nothing in this Section 1.2, however, shall relieve the Contractor of any of its obligations under the Contract Documents. Other conflicts between or among the Contract Documents shall be resolved under the following rules of construction:

- .1 The specific shall govern over the general.
- .2 Specified dimensions shown on the Drawings shall govern, even though they may differ from dimensions scaled on the Drawings, if any;

- .3 Drawings of larger scale shall govern over those of smaller scale; any special Drawing details shall govern over standard detail;
- .4 Specifications shall govern over Drawings in matters of material or equipment specified; Drawings shall govern over Specifications in matters of construction or installation detail;
- .5 Documents of later date shall always govern; except that
- .6 The Owner's Bid Documents shall govern over Contractor's Proposal; and
- .7 The Agreement shall govern over all other documents, regardless of their dates.

§ 1.2.2 Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified. On certain Contract Documents, only a portion of the detail may be fully shown and the remainder indicated in outline, in which case the general detail shall be understood as applying also to other like portions of the Work. For example, if case carving, ornament, facing, veneer or similar treatment is indicated by starting of the detail, such detail must be continued throughout the course of parts in which it occurs, and to all similar parts in the Work wherever such general detail shall apply unless otherwise specifically provided in the Contract Documents.

§ 1.2.3 The organization of the Specifications into divisions, sections, and/or articles, and the arrangement of the Drawings, shall not dictate to the Contractor in any way how the Work is to be divided among Subcontractors, or establish the extent of Work to be performed by any trade. Similarly, the organization of the Contractor's duties into different phases or categories in the Agreement is for convenience only and shall not limit the generality of the Contractor's obligation to provide all of the Services whenever necessary.

§ 1.2.4 All references in the Contract Documents to standards (such as commercial standards, Federal specifications, trade association standards or similar standards), whether for materials, processes, assemblies, workmanship, performance or any other purpose, shall mean, unless otherwise noted, the most recent available published version of such standard as of the date of that part of the Contract Documents bearing the reference. All standards referred to, except as modified in the Contract Documents, shall have the same force and effect as though printed therein. These standards will not be furnished to the Contractor, as the Contractor and all members of the Construction Team are required to be familiar with their requirements.

§ 1.2.5 Whenever a provision of the Contract Documents conflicts with agreements or regulations in force among members of trade associations, unions or councils, which regulate or distinguish the portions of the Work which shall or shall not be performed by a particular trade, the Contractor shall make necessary arrangements to reconcile the conflict without delay, damage, cost or recourse to the Owner. Delays in the Work resulting from the failure of the Contractor to use its best efforts to reconcile any such conflicts shall not result in an extension of the Construction Time and shall not result in the increase of the Contract Sum or Guaranteed Maximum Price.

§ 1.2.6 The Contractor acknowledges that there may be items of the Work, which the Contractor is responsible to provide under the Agreement that are not drawn or specified in the Design but are necessary for the proper execution and completion of the Work and are consistent with and reasonably inferable from the Drawings and Specifications. All such items shall be provided as part of the Work without delay in its progress and without any increase in the Contract Sum or Guaranteed Maximum Price.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (i) specifically defined, (ii) the titles of numbered articles or (iii) 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 Drawings, Specifications, the Project Manual, and all other documents, electronic or otherwise, and all data used in compiling, and the results of, any tests, surveys or inspections at the Project Site, as well as all photographs, drawings, specifications, schedules, data processing output, building information modeling (BIM), integrated project delivery (IPD) and/or computer-aided design/drafting (CAD) systems disks/tapes, computations, studies, audits, reports, models and other items of like kind, and all intellectual property, prepared or created for or in

connection with the Project, regardless of whether they were prepared by the Owner, the Contractor, Architect or a third party, shall constitute the Project Documents, and shall belong to the Owner and may be used by the Owner or others on other projects, for additions to this Project, or for completion of this Project by others. The Contractor shall not, without the prior written consent of the Owner, permit anyone to use any Project Documents prepared for or in connection with the Project, or any concepts or ideas developed in connection with the Project, for any purpose other than the Project.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service, or any other documents prepared for or in connection with the Project, or any concepts or ideas developed in connection with the Project, for any purpose other than the Project without the specific written consent of the Owner. The Owner shall at all times have access to and control over the disposition of any Drawings, Specifications, Instruments of Service, and other documents pertaining to the Project.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 CONFIDENTIALITY

§ 1.7.1 The Contractor shall not knowingly or negligently communicate or disclose at any time to any person any information concerning the Work or the Project, except: (i) with prior written consent of the Owner, (ii) information which has become part of the public domain prior to the date of the Agreement, (iii) information which becomes part of the public domain by means other than an unauthorized act or omission of the Contractor, (iv) as may be required to perform the Work or by any Applicable Law, or (v) to its professional advisors or lender (all of whom shall be required to maintain such information in confidence).

§ 1.7.2 The Contractor shall promptly upon the request of the Owner return and surrender to the Owner the original or legible copies of any materials, records, notices, memoranda, recordings, Drawings, Specifications and mock-ups and any other documents furnished by the Owner to the Contractor.

§ 1.7.3 The Contractor shall maintain, and shall cause all members of the Construction Team, and its and their directors, officers, employees, and agents, to maintain, during and after the term of the Agreement, the confidentiality of all trade secrets, know-how, confidential data or other proprietary information of the Owner when designated as such and shall not use such information for any purpose whatsoever except for uses permitted by Section 1.7.1.

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

§ 1.7.5 The Contractor shall not, without the express written consent of the Owner, discuss the Work or any part thereof with persons under circumstances in which such communications can reasonably be expected to be published in newspapers, magazines or trade journals or broadcast on radio or television. This restriction shall not apply to statements consistent with a crisis management plan development and agreed to by both parties with respect to the Work. This restriction also shall not apply to any fair response by the Contractor to publicity released by the Owner that is detrimental to the reputation of the Contractor. Any such contact shall be referred to the Owner for response. Further, without the Owner's consent, the Contractor shall not participate in professional or trade seminars or publish or submit articles for publication, the subject of which is, in whole or in part, the Work. Any such proposed article or publication shall be submitted to the Owner for review and approval, which shall not be unreasonably withheld.

§ 1.7.6 The Contractor shall cause all members of the Construction Team to specifically acknowledge that the provisions of this Section 1.7 are binding upon them.

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.1.3 The Owner may at any time and from time to time designate a third-party, such as an architect or engineer or other professional consultant, to perform any of its duties under the Agreement. In the event of any such designation, the Owner shall provide written notice to the Contractor. The duties, responsibilities and limitations of authority of any third party designated by the Owner pursuant to Section 2.1.1, shall not be restricted, modified or extended without written consent of the Owner.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. If requested in writing by the Contractor, the Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 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. All permits, fees, licenses, and approvals not specifically identified in the Agreement or Contract Documents as the responsibility of the Owner shall be the responsibility of the Contractor.

§ 2.2.3 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. The Contractor shall immediately notify the Owner and the Architect of any errors, problems or inaccuracies, which the Contractor becomes aware of in the course of its use of such surveys.

§ 2.2.4 Upon written request, 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.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, pursuant to Section 1.5.2, copies of Drawings and Project Manuals as follows:

- .1 one reproducible set or an electronic file copy, and a maximum of four (4) sets of Drawings and Project Manuals, including revisions thereto. If additional copies are desired by the Contractor, copies will be furnished upon Contractor's request for the actual cost of reproduction and handling.
- .2 all instruments, Change Orders, Field Directives, and other like correspondence pertaining to the Work will be provided to the Contractor in the form of one (1) signed copy by the Owner.
- .3 Change Proposal Documents, including Bulletins, revised drawings, etc. will be provided to the Contractor in the form of one reproducible set and four (4) printed sets.

§ 2.3 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 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. This right shall be in addition to and not in limitation of the Owner's rights under any provision of the Contract Documents. The Owner's right to stop the Work shall not relieve the Contractor of any of the Contractor's responsibilities and obligations under or pursuant to the Contract Document.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor fails, defaults, or neglects to carry out the Work in accordance with the Contract Documents and fails within a five (5) day period after receipt of written notice from the Owner or the Owner's designee to commence and continue correction of such failure, default, or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, including any claim against the Contractor's Performance Bond, correct such deficiencies. In the event the Contractor's failure, default, or neglect results in a threat to the safety of persons or property, the Contractor shall immediately correct such failure, default, or neglect; otherwise, the Owner may undertake the same actions as permitted in the prior sentence. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including any and all legal expenses incurred to effectuate and enforce this provision, including Owner's expenses and compensation for the Architect's, its employees or agents, and the Architect's Consultant's Additional Services made necessary by such failure, default, or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior acknowledgement of the Architect. In the event the Owner directs another entity to perform Work pursuant to this Section that otherwise is the obligation of the Contractor, including correction of safety violations, either at the Contractor's request or as a result of the Contractor's failure to perform such Work, that other entity shall charge the Contractor all costs for labor, material and equipment plus that other entity's administrative, profit and overhead costs. The Contractor shall pay that other entity within ten (10) days of the date of invoice. If not paid within ten (10) days, the Contractor authorizes the Owner to withhold that amount from the Contractor and to pay the same to that other entity from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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

§ 2.5 LIMITATION ON OWNER'S RESPONSIBILITY

§ 2.5.1 The Owner, Architect and Owner's Representative Consultant will not, under any circumstances, have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. Owner, Architect and Owner's Representative Consultant will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents, except the Architect shall provide services at no additional cost, made necessary by major defect or deficiencies in the Work of the Contractor(s) which, through reasonable care, should have been discovered by the Architect and promptly reported to the Owner and the Contractor(s), but which the Architect failed to so discover and/or report. Additionally, any design or Specification error furnished by the Architect shall be promptly corrected by the Architect in accordance with the Agreement Between Owner and Architect. The Owner, Architect and Owner's Representative Consultant will not have control over or charge of and will not be responsible for acts or omissions of any member of the Construction Team.

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

§ 2.5.3 The Owner may, in addition to delivering them to the Architect, from time to time review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with the Owner's objectives and goals. Review of such submittals will not be conducted for the purpose of determining their accuracy and completeness of 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. The Owner's review and approval of or taking other appropriate action on the Contractor's submittals shall not relieve the Contractor or the Architect of any of their obligations. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Owner's receipt of any informational submittals, of any submittals relating to equipment or systems designed by the Contractor, or of any submittals relating to alternatives proposed by any member of the Construction Team shall not constitute approval of or action by the Owner on such submittals. All such submittals will be received by the Owner for record purposes only.

§ 2.5.4 The Owner may from time to time review or observe or take other appropriate action concerning the Work and any documents, and the selection of Subcontractors and Suppliers. The Owner's doing so shall be solely for the limited purpose of providing the Contractor with information as to how such items relate to the Owner's objectives and goals with respect to the Work and not for the purpose of determining their accuracy and completeness and shall in no way create any responsibility on the part of the Owner for or complicity by the Owner in errors, inconsistencies, or omissions, nor shall any such review, approval, other action or payment of the Contractor alter or in any way reduce the Contractor's obligations under the Agreement.

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 is the primary (main) contractor who oversees and is responsible for all the Work performed on the Project, and to whom any and all subcontractors on the Project are responsible. 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 obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 These General Conditions refer to the relationship between the Owner and Contractor. As to the contract between the Contractor and its Subcontractors, the General Conditions shall be read as the Contractor having the position of the Owner and the Subcontractors having the position of the Contractor. The Subcontractors are bound to the Contractor just as the Contractor is bound to the Owner. The Subcontractor shall have all the rights, duties and obligations to the Contractor as the Contractor has rights, duties and obligations to the Owner. The Subcontractors shall agree to and accept the same responsibility to the Owner as the Contractor. In the event any failure of a Subcontractor causes any type of injury or loss to the Owner, direct or indirect, the Contractor shall be jointly and severally liable to the Owner for such injury or damage in addition to any responsibility or liability of the Subcontractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 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 discovering errors, omissions, or inconsistencies in the Contract Documents. Errors, ambiguities, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require. Contractor's failure to report to and requesting information clarifying such errors, ambiguities, inconsistencies or omissions from the Architect shall result in interpretation of and resolving such errors, ambiguities, inconsistencies or omissions in favor of the Owner. 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, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.4, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor permits any construction activity to be performed that involves an error, inconsistency or omission in the Contract Documents or a physical condition at the Project Site it recognized or should, employing the degree of diligence required of that Contractor under the Contract Documents, have recognized without providing notice to the Owner and receiving authorization to proceed, the Contractor shall assume responsibility for such performance and bear all costs attributable to correction, without recovery, whether under the Contract Sum, Guaranteed Maximum Price or otherwise. If the Contractor performs the obligations of Section 3.2.2 and 3.2.3, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to Applicable Laws, unless the Contractor recognized such errors, inconsistency, omission or difference and knowingly failed to report such to the Architect.

§ 3.2.5 Except and only to the extent otherwise provided in Section 2.2.3 or Section 3.7.4, by signing the Agreement, the Contractor agrees: (i) to bear the risk of concealed or unknown conditions other than those defined in Section 3.7.4 as Materially Different Conditions, if any, which may be encountered in performing the Work; and (ii) that the established Contract Sum or Guaranteed Maximum Price accepted this responsibility with full knowledge of this risk. In agreeing to bear the risk of concealed or unknown conditions to the extent herein provided, the Contractor understands that, except and only to the extent provided otherwise in Section 2.2.3 or Section 3.7.4, concealed and/or unknown conditions shall not excuse the Contractor from its obligation to achieve full completion of the Work within the Construction Time, and shall not entitle the Contractor to an adjustment of the Contract Sum or Guaranteed Maximum Price. Except as provided in Section 2.2.3: (i) the Owner has not determined the accuracy or completeness of any information it may provide concerning physical conditions at the Project Site, and all such information is made available to the Contractor, and shall by the Contractor be made available to bidders without any representation or warranty by the Owner whatsoever as to its accuracy, completeness, or relevancy; (ii) the Contractor and the bidders shall independently evaluate such information for their use and shall be solely responsible for use or interpretation of such information; (iii) any such use or interpretation shall not be the basis of any claim whatsoever against the Owner.

§ 3.2.6 If the Contractor encounters concealed or unknown conditions that differ materially from those anticipated or expected, whether or not it is entitled to assert a Claim under Section 3.7.4, the Contractor shall promptly notify the Owner, as required in Section 3.7.4, in writing of such conditions so that the Owner can determine if such conditions require design details, which differ from those design details shown in the Design or some other remedial action. The Contractor shall be liable to the Owner for any extra costs incurred as the result of the Contractor's failure to give such required notice.

§ 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety

thereof and, except as stated below, shall be fully and 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 written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed in writing to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required 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 Sub-subcontractors at any tier and their respective agents and employees, and any other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors or Sub-subcontractors at any tier. Reference in the Contract Documents to the Work, obligations, acts or omissions of the Contractor shall be interpreted to apply to those of its Subcontractors, Sub-subcontractors at any tier, material suppliers and their respective agents and employees irrespective of whether such other entities are specifically identified in such reference.

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

§ 3.4 LABOR AND MATERIALS AND UTILITIES

§ 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 authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 By making requests for substitutions based on Subparagraph 3.4.2 above, 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, including but not limited to 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 completed in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.3.1 The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other contractors and individuals associated with the Project. The Contractor shall also minimize the likelihood of any strike, work stoppage or other labor disturbance.

§ 3.4.3.2 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind which regulate, control or distinguish what activities shall or shall not be included in the Work of any particular trade.

§ 3.4.3.3 In addition, so as to ensure compliance with the Federal Immigration Reform and Control Act of 1986 and regulations promulgated thereunder, Contractor shall establish and diligently implement, and require each of its Subcontractors and sub-Subcontractors at any tier and all other persons and entities providing labor or services related to the Work or the Project on behalf of Contractor to establish and diligently implement, a policy of hiring only

individuals who are lawfully authorized to work in the United States; neither the policy nor its implementation shall discriminate because of citizenship status against U.S. citizens, U.S. nationals or permanent residents or temporary residents having proper work authorization. Contractor shall defend hold harmless and indemnify Owner and the other Indemnitees against any Loss, arising from or related to the failure of Contractor or any Subcontractor or sub-Subcontractor at any tier or any other person or entity providing labor or services related to the Work or the Project on behalf of Contractor to comply with the foregoing requirements. As used herein, the terms "Indemnitees" and "Loss" shall have the same meanings as set forth in Section 3.18 below.

§ 3.4.4 In all cases involving utilities, unless the Contract Documents specifically provide otherwise, it shall be the Contractor's responsibility to coordinate the Work with the owners of such utilities, for the protection of such utilities and for the safety associated with working with or in the vicinity of such utilities. The Contractor shall coordinate any work required by private and/or public utility companies to provide utilities to the Work and/or shall coordinate relocation of utilities as required by the Work. Any reference to the Owner being responsible for the coordination of, the paying for, or the relocation of any utility or associated equipment, which it does not own or control, requires only reasonable efforts by the Owner to coordinate such activity.

- .1 Utilities or other services which are shown on surveys, or not shown but encountered or otherwise found, shall be protected by the Contractor from any damage from any Work and operations under the Contract Documents, unless or until they are abandoned. Except for utilities or other services that are not shown on surveys and were not previously encountered or otherwise found by Contractor or anyone working for or on behalf of the Contractor: (i) unless or until they are abandoned, or to be abandoned, the Contractor shall immediately repair, or cause the responsible party to repair, any damage from the Work or operations and restore the utilities and services to an equal or better condition than that which existed prior to the damage or disruption; (ii) the cost of repair of such utilities and services shall be borne solely by the Contractor or the responsible party without an extension of the Construction Time and without any increase in the Contract Sum or the Guaranteed maximum Price.
- .2 To the extent practical, the Contractor shall be entitled to tie into the Owner's existing water, power, natural gas and steam facilities without charge as to any usage in connection with the Work.
- .3 No one except the Owner is permitted to connect to or activate any utility services in any building or facility owned or occupied by the Owner. When such connection or activation services are required, the Owner shall be contacted, and unless otherwise specifically provided in the Contract Documents all such work shall be performed by Owner's personnel. In all cases, the Contractor shall give notice of the need for such services, to the Owner, in a timely manner (at least seventy-two (72) hours in advance) in order to avoid delays to the Project's progress.

§ 3.4.5 The Contractor shall cause pre-purchased equipment and material to be delivered to the Project Site or temporarily stored to assure coordination with other trades. The Contractor shall be responsible to verify that such equipment is in accordance with the Specifications.

§ 3.4.6 To the extent practicable, materials and equipment will be delivered to the Project site in original containers or wrappings. Used materials or equipment will not be permitted to be incorporated into the Work without the written approval of the Architect and the Owner or unless specifically permitted or required by the Contract Documents. The Architect and the Owner shall have the right to have any such improperly used materials or equipment removed from the Project site or completed Work whenever detected. The Architect's or Owner's failure to detect such used materials or equipment shall not relieve the Contractor of its obligations under this paragraph. Neither the Architect nor the Owner shall have any obligation to inspect for or improperly detect used materials or equipment.

§ 3.4.7 All members of the Construction Team shall cooperate with each other and with any separate contractors or persons employed by the Owner. Each of these parties shall correlate their Work and activities with the Work of others, and in the case of disagreements as to the proper procedure, sequence of Work, use of space, responsibility for damage, or other matters related to the Work, the parties involved shall abide by the Contractor's decision as to the procedure to be followed.

§ 3.4.8 Except in cases of unreasonable interference that constitutes an Owner Delay, the Contractor shall not be relieved of its obligation to cause the Work to be performed on time in accordance with the Contract Documents by the activities or duties of anyone involved in the administration of the contract, or by tests, inspections or approvals required or performed and coordinated by someone other than the Contractor.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranties shall be in the form and substance as required by Section 5.3.2.11 and/or the Contract Documents.

In addition to any other warranties, guarantees, or obligations set forth in the Contract Documents or applicable as a matter of a law and not in limitation of the terms of the Contract Documents, the Contractor warrants and guarantees that:

- .1 The Owner will have good title to the Work and all materials and equipment incorporated into the Work and, unless otherwise expressly provided in the Contract Documents, will be new;
- .2 The Work and all materials and equipment incorporated into the Work will be free from all defects, including any defects in workmanship or materials;
- .3 The Work and all equipment incorporated into the Work will be fit for the purpose for which they are intended;
- .4 The Work and all materials and equipment incorporated into the Work will be merchantable; and
- .5 The Work and all materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

Upon notice of the breach of any of the foregoing warranties or guarantees or any other warranties or guarantees under the Contract Documents, the Contractor, in addition to any other requirements in the Contract Documents, will commence to correct such breach within seventy two (72) hours after written notice thereof and thereafter will use its best efforts to correct such breach to the satisfaction of the Owner; provided that if such notice is given after final payment hereunder, such seventy two (72) hour period shall be extended to seven (7) days. The foregoing warranties and obligations of the Contractor shall survive the final payment and/or termination of the Contract.

§ 3.5.2 The Contractor shall assign to the Owner at the time of Substantial Completion any and all manufacturer's warranties relating to materials and labor used in the Work. Contractor shall perform the Work in a manner that will preserve any and all manufacturer's warranties.

§ 3.5.3 If the Contractor uses any portion of the Work or the Owner's other property, such items will be restored to the condition they were in immediately prior to such use at or before the time of Substantial Completion, or as otherwise specified in the Contract Documents. The Contractor's warranty and agreement to correct Defective Work includes the Contractor's obligations under this section.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, commercial activities, local business use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contract Sum includes all such applicable taxes and the Contract Sum shall not be modified as a result of Contractor's failure to include all applicable taxes, or a change in Contractor's tax liability. The Contractor shall pay all state and federal taxes levied on its business, income or property and shall make all contributions for social security and other wage or payroll taxes. The Contractor shall be solely responsible for such payments and shall indemnify the Owner and hold it harmless from any assessment and payment of the same.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution, completion, and occupancy of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded; including, without limitation, all connection charges, assessments and inspection fees imposed by any municipal agency or utility company. All such permit fees and charges are included in the Contractor's Contract Sum or Guaranteed Maximum Price.

§ 3.7.2 The Contractor shall comply with and give notices required by Applicable Laws applicable to the performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to Applicable Laws 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 subsurface or otherwise concealed physical conditions that differ materially from both (i) those indicated in the Contract Documents, and (ii) those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents (“Materially Different Conditions”), the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed, irrespective of Section 15.1.2 or other provisions to the contrary contained in the Contract Documents, and in no event later than forty-eight (48) hours after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that Materially Different Conditions exist that cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, the Architect will recommend to the Owner an equitable adjustment in the Contract Sum or Construction Time, or both. If the Architect determines that the reported conditions at the site are not Materially Different Conditions or that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect’s determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.7.6 The Contractor shall notify the municipality, public utilities, agencies, Miss Dig and the Owner in a timely manner so as to allow reasonable response time before digging any tunnels or similar underground work, and shall protect all existing utilities, sidewalks, streets, and similar improvements while performing the Work.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor’s costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (i) the difference between actual costs and the allowances under Section 3.8.2.1 and (ii) changes in Contractor’s costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall confirm in writing to the Owner through the Architect the name and qualifications of the proposed superintendent. The Architect may reply within fourteen (14) days to the Contractor in writing stating (i) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (ii) that the Architect requires additional time to review. Failure of the Architect to reply within the fourteen (14) day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's prior written consent, which shall not unreasonably be withheld or delayed, except with another superintendent who is satisfactory to the Owner.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, as part of its Contract Sum or Guaranteed Maximum Price, promptly after being awarded the Contract or at other times requested by Owner or set forth in the Contract, shall prepare and submit to the Owner and the Architect a proposed Construction Schedule, to serve as a schedule for the performance of the Work. Except with the Owner's prior written approval, the Construction Schedule shall maintain the critical path and all milestones and deadlines established in the Master Design and Construction Schedule. The schedule shall not exceed time limits current under the Contract Documents, shall be reviewed and, if appropriate, revised monthly or at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (i) be coordinated with the Contractor's construction schedule, and (ii) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Construction Time based on the time required for review of submittals. The submittal schedule shall substantively follow the requirements depicted in figure 3.12.4.3.

§ 3.10.3 Construction Schedule shall be in a detailed critical path method format satisfactory to the Owner which shall also: (i) provide a graphic representation coordinating and sequencing all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; (iii) set forth Milestone Dates and manpower loading. The Construction Schedule shall allow for and depict the following:

- .1 local weather conditions;
- .2 local jurisdictional or other work restrictions;
- .3 specific restrictions, constraints and Contract completion dates stipulated in the Contract Documents;
- .4 intermediate completion dates stipulated in the Contract Documents;
- .5 time for needed approvals by the Owner, Architect, or other agency or authority;
- .6 Owner, Architect, or other agency or authority inspections and/or tests where required by the Contract Documents;
- .7 the work of separate contractors or the Owner;
- .8 necessary resources to accomplish the Work within the Construction Time;
- .9 other information that may be provided by the Architect or the Owner; and
- .10 a legend for each report or chart which clearly identifies how to interpret each.

§ 3.10.4 Upon review and acceptance by the Owner, the Construction Schedule shall be deemed part of the Contract Documents and shall not be subject to change except in accordance with Section 8.3 and Article 7. If it is not accepted, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and Architect and resubmitted for acceptance.

- .1 The Construction Schedule, subject to any Modification granted in accordance with the Agreement, shall constitute the Contractor's scheduling commitment to the Owner. It shall also serve as the basis for the Contractor's Contract Sum or Guaranteed Maximum Price.
- .2 The Contractor shall meet at least bi-weekly with the persons providing labor or materials under each trade package to review their progress and take appropriate action to maintain the Construction Schedule.
- .3 The accepted Construction Schedule shall be updated (i) monthly to compare actual progress with projected progress and (ii) at any other time if requested by the Owner. The updated Construction

- Schedule shall reflect the status of the Project's progress at the date of update and the Contractor's planned progress of remaining portions of the Work.
- .4 The Contractor shall develop recovery schedules when critical path or Milestone Dates are or may be at risk.
 - .5 The Contractor is responsible for the completeness of the Construction Schedule. The Contractor shall confirm in writing, with each submission of the Construction Schedule, that the Contractor has reviewed the Construction Schedule with Subcontractors and Suppliers and has coordinated and allowed for the lead times associated with the delivery of materials or equipment required for the proper progress of the Work.
 - .6 The sequence of activities in the Construction Schedule will reflect the Contractor's intended approach to the execution of and completion of the Work. The Construction Schedule shall be broken into work areas to provide for a clear identification of the planned progress of the Work. Unless it is impractical, the duration of each activity will not be greater than twenty (20) working days. All durations shown will be in working days.
 - .7 The Owner's or the Architect's review of Construction Schedule shall not constitute or imply the acceptance of or relieve the Contractor of the responsibility for the means, methods, sequences, techniques or procedures used in the performance of the Work.
 - .8 The Construction Schedule shall represent the Contractor's plan for organizing, directing, managing, controlling, staffing and executing the Work required by the Contract Documents. The Owner shall have the right to rely on such Construction Schedule to coordinate and otherwise plan the work of the Owner, Architect, or other separate contractors, and to evaluate progress for payment purposes or other purposes as described in the Contract Documents.
 - .9 All float time in the Construction Schedule shall be shared by the Owner and Contractor or otherwise used for the benefit of the Project.
 - .10 The updated Construction Schedule will identify the actual start and finish dates of all activities completed and the actual start date and remaining duration of all activities in progress.
 - .11 At the completion of the Work and as a condition precedent to final payment to the Contractor, the Contractor shall submit two (2) copies of the final updated Construction Schedule to the Owner.

§ 3.10.5 The Contractor shall proceed strictly (not substantially) in accordance with the critical path set forth in the Construction Schedule. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. If any progress report indicates any delays, the Contractor shall, at no cost to the Owner, propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment of the Construction Time or any Milestone Date or the Contract Sum or Guaranteed Maximum Price unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.10.6 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed, together with a certification that they are "as-built" documents.

§ 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.

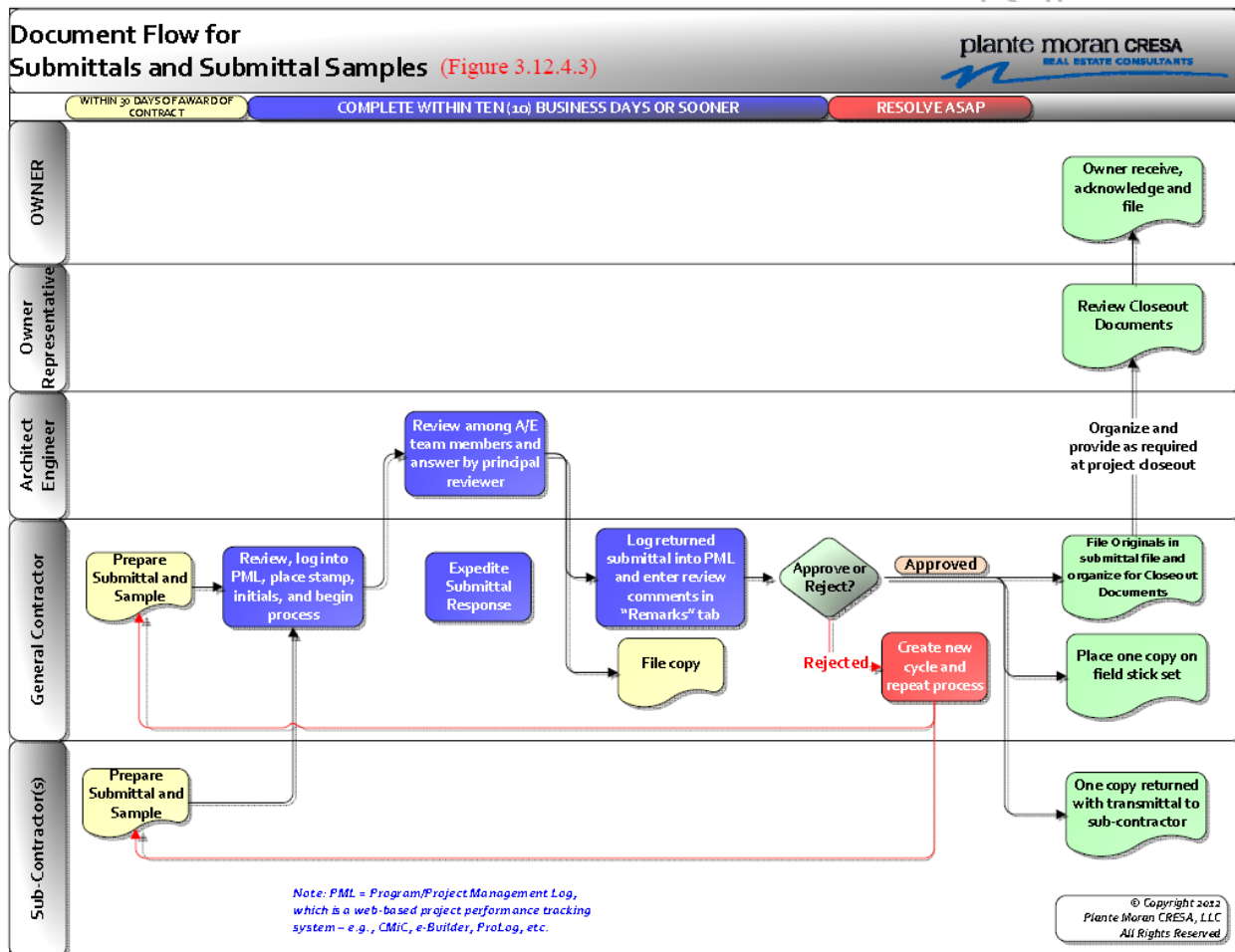
§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.4.1 As part of the document control system, the Contractor shall develop and keep current a Submittal log, which is coordinated with the Construction Schedule.

§ 3.12.4.2 The Contractor shall monitor the time required for submission of Submittals to the Architect, as well as the time required for their review and approval by the Architect. The Contractor shall take corrective action as appropriate to insure the timely submission and review of Submittals.

§ 3.12.4.3 Unless required otherwise in the Construction Documents, the Architect and Contractor shall follow and shall cause their respective Consultants, Subcontractors and/or Suppliers to follow the submittal document control process and schedule described in the figure 3.12.4.3 below, *Document Flow for Submittals and Submittal Samples*.



§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate

contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.5.1 The Contractor shall check thoroughly all such Submittals, including those it prepares itself, as to measurements, sizes of members, materials and all other details, to assure that they conform to the intent of the Contract Documents.

§ 3.12.5.2 The Contractor shall promptly return to the Subcontractors and/or Suppliers, for correction, any of the Submittals that are found inaccurate or otherwise erroneous.

§ 3.12.5.3 After the Contractor has checked and approved such Submittals, the Contractor shall place thereon the date of its approval and the legible signature of the individual who reviewed them and shall then submit them to the Architect for review. The quantity required and the manner of submission will be as required by the outlined procedure shown on the attached flow chart. The Architect may refuse to check or review any Submittals, which are not submitted in compliance with these requirements.

§ 3.12.5.4 Submittals describing manufactured equipment must be “project specific”. Every submission copy must be clearly marked to fully define the intended model number, configuration and other applicable product information.

§ 3.12.5.5 Among other things, the Contractor shall be responsible for the constructability, content, completeness and consistency of all Submittals.

§ 3.12.5.6 The Contractor shall notify the Owner when Submittals are received. It shall deliver copies to the Owner upon request.

§ 3.12.5.7 The Contractor shall notify the Owner and the Architect in writing if any Submittals appear to modify the requirements of the Contract Documents. This notice shall identify each and every change.

§ 3.12.5.8 The Contractor shall furnish to the Architect for review when requested, or when required by the Contract Documents, Samples of all materials and finishes to be used in the execution of the Work. Such Samples shall be of sufficient size to be representative and the required number of them shall be submitted before the Work utilizing the materials they exemplify is commenced and in ample time to permit examination thereof. In all cases, Samples shall be submitted at least three (3) weeks prior to when approval is needed to maintain the progress required by the Construction Schedule. All materials furnished and finishes applied to the Work shall be fully equal to the submitted Samples.

1. Samples shall be forwarded to the Architect with all shipping charges prepaid. Unless otherwise directed, Samples shall be submitted in triplicate, boxed or wrapped properly, each labeled with the name, type or brand of the materials, its place of origin, the names of its producer, Contractor, and the Project.
2. The approval of Samples is generally directed towards establishing quality, color and finish criteria, and does not modify the requirements of the Contract Documents as to dimensions or design.

§ 3.12.5.9 Each Shop Drawing which details by original line drawings the Work to be fabricated for the job shall be submitted in either electronic or in a printed form suitable for reproductions plus three (3) copies made therefrom. A clear space, 8 inch x 8 inch, shall be allowed on the Shop Drawings in the lower right hand corner for the placement of review and date stamps. After review, the Architect will obtain a copy from the documents as required for use and will return the reviewed and noted, or corrected, documents to the Contractor and a copy to the Owner. Drawings returned for resubmission or disapproved require the original Shop Drawing to be corrected and a new set of documents with the required edits made therefrom submitted. Such procedure shall be followed until review is final. The Contractor shall obtain and provide such number of approved documents from the final drawing, which carry the Architect's stamp of approval, as may be required for distribution. This shall include the forwarding of one set of approved documents each to the Architect and the Owner for record, and necessary quantity of documents for the Owner's use.

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

§ 3.12.6.1 The Architect will check and review the Submittals with reasonable promptness and within any time limits agreed upon in writing and will return them as hereinafter described, indicating by notation, or by written instructions, or other directions, any corrections, which in the judgment of the Architect, may be necessary to meet the requirements of the Contract Documents. The Contractor shall then review such notations, instructions, or directions, and if the Contractor concurs therein, shall make or have made such corrections, and shall, when so noted on the submittals or requested by the Architect, resubmit corrected Submittals to the Architect as soon as possible, for final check and review. Such final check and review by the Architect of Submittals so corrected and resubmitted will be limited to the corrections only, and the Contractor, by such resubmission shall be held to have represented that such submittals contain no other alterations, additions, or deletions, unless the Contractor, in writing, directs the Architect's specific attention to same. Should the Contractor question or disagree with such notations, instructions, or directions, the Contractor shall direct the Architect's attention to same for further clarification before resubmitting them. Corrections or changes indicated on submittals shall not be construed as an order for a change in the Work or to perform extra work.

§ 3.12.6.2 The Architect's review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor. The Architect does not assume responsibility for errors, omissions or deviations from the Contract Documents contained in such Submittals. Any such errors, omissions or deviations from the Contract Documents must be corrected by the Contractor, irrespective of the receipt and review of the Submittals by the Architect, and even though the work is done in accordance with such Submittals, unless such error, omission or deviation from the Contract Documents is specifically called to the Architect's attention by the Contractor in a separate written letter of communication, at the time of submittal, and the Architect has given written approval of such error, omission or deviation.

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

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

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written 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 Laws. 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 cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, 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 Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by Applicable Laws, lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project Site. After equipment is no longer required for the Work, if feasible, it shall be promptly removed from the Project Site. Protection of construction materials and equipment stored at the Project Site from weather, theft, damage and all other casualty is solely the responsibility of the Contractor, who shall bear the risk of loss thereof except to the extent such loss is covered by insurance the Owner is required to maintain under the Agreement.

- .1 Prior to Substantial Completion, all temporary work, of every nature, shall be dismantled and removed from the Owner's premises.
- .2 If at any time it becomes necessary to move material or equipment, which has been temporarily located or stored on the site during construction, the Contractor shall, when directed, cause them to be moved to another location without charge to the Owner.

§ 3.13.3 There shall be no offsite storage of materials or equipment without the Owner's prior written approval in each instance. If the Owner consents to offsite storage, the Contractor shall also comply with the following specific requirements:

- .1 Title to such materials shall be vested in the Owner, after payment therefor to the Contractor, as evidenced by documentation satisfactory in form and substance to the Owner, including bills of sale, recorded financing statements, UCC filings and UCC searches. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project Site in an amount not less than the total replacement value thereof.
- .2 Only assembled components may be stored off the Project Site.
- .3 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.
- .4 Such materials shall be (i) protected from diversion, destruction, theft and damage to the satisfaction of the Owner, (ii) specifically marked for use in the Work, and (iii) segregated from other materials at the storage facility.

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

§ 3.13.5 The Contractor shall ensure that the Work is at all times performed in a manner that affords the Owner, the Architect, and the Owner's separate contractors reasonable access, both vehicular and pedestrian, to the Project Site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project Site shall be free from all debris, building materials and equipment. Without limiting any other provision of the Contract Documents, the Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the Project Site or (ii) portions of the Project in which Work is not being carried out in the event of partial occupancy.

§ 3.13.6 The Contractor shall not, without the Owner's prior written approval, permit any workers to use any existing facilities at the Project Site, including, without limitation, lavatories, toilets, entrances, and eating and parking areas, other than those designated by the Owner. Without limiting any other provision of the Agreement, the Contractor shall enforce compliance with all policies, procedures, rules, and regulations promulgated by the Owner in connection with the use and occupancy of the Project Site and the surrounding area. The Contractor shall also cause all members of the Construction Team to comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project Site and the surrounding area. However, the Contractor shall not be responsible to regulate the workers' conduct outside of work hours except as may be permitted under Applicable Laws and collective bargaining agreements.

- .1 Should any room or part of an existing building or facility be temporarily used by any member of the Construction Team as a shop, storeroom, locker room, an office, or for any other purpose, such room or part shall, prior to completion and when so directed, be thoroughly cleaned and returned to its original condition. All damage to any such room or part of an existing building or facility arising therefrom shall

be corrected, and the whole left in a condition acceptable to the Owner by the Contractor. No room or part of an existing structure shall be so used without the prior written consent of the Owner.

§ 3.13.7 Anything contained in the Contract Documents to the contrary notwithstanding, no one except the Owner shall be permitted to disrupt the operation of any building system or any other services without the Owner's prior written consent. Any request to perform such work shall be in writing, received by the Owner no less than five (5) days prior to the commencement of the requested disruption, and shall detail (i) the exact nature and duration of such interruption, (ii) the area affected, and (iii) any impact upon the Construction Schedule caused by such proposed temporary disruption. Except in the case of Additional Measures, all Work shall be performed during the hours and on the days set forth in the Specifications. The Contractor's failure to comply with the notice provisions of this section shall constitute a waiver by the Contractor of any right it may have to an adjustment of its compensation, or the Construction Time, on account of any postponement, rescheduling, or other delays ordered by the Owner in connection with any Work affecting a Critical Service for which appropriate notice was not furnished.

§ 3.13.8 The Contractor will consult with the Owner concerning any necessary operations at the Project site, including staging area limits, office or storage trailer locations, dumpster operations, equipment and material deliveries, hoisting areas and any other construction impacts on the Owner's grounds.

- .1 All areas used by member of the Construction Team must be properly fenced. Unless the Contract Documents designate another specific type of temporary fencing to be used, the minimum temporary fencing requirement will be the use of chain-link fence having a minimum exposed height of eight (8) feet above grade. Temporary barricades shall also be provided as necessary for the safety of the general public.
- .2 The Contractor shall locate all underground utilities and lawn irrigation piping prior to driving fence posts.
- .3 Materials, equipment, trailers, vehicles and all other operations are not to be located under or within the drip line of trees. Construction, staging or storage operations in flower and shrub plantings and beds are to be avoided.
- .4 Driving of vehicles on lawn areas is strictly prohibited.
- .5 Any tree trimming or tree root disturbances shall be performed only after consultation, inspection and approval by the Owner.
- .6 All existing traffic control devices, such as bollards, chain and posts, building signs, or traffic signs, shall not be removed without specific approval from the Owner.
- .7 Unless stated otherwise in the Contract Documents, the Contractor will be responsible to restore, to the Owner's satisfaction, all disturbed areas caused by the Work.
- .8 All lawn, shrub and tree restoration work, including soil aeration, tree trimming and plant material replacements shall be performed by a qualified landscape contractor.
- .9 The Contractor shall also cause all streets, drives, sidewalks, walls, lights, signs, fences, poles and the like where disturbed or damaged by the Work to be repaired, and shall leave them in the same condition after completion of the Work as before operations started.
- .10 The Contractor shall provide and maintain pedestrian walkways and other means of access to and from any building or facility requiring such as a result of the execution of the Work. Such means of access shall be as required by the Contract Documents and/or the Owner's directions.
- .11 The Contractor shall, subject to the approval of the Owner, designate areas for eating, provide adequate receptacles, and maintain the area in a sanitary condition free of rodents and pests. Remnants of food shall not be allowed to spread beyond the trash receptacles in the designated eating areas. The trash receptacles for the designated eating areas shall be emptied at least once each work day.

§ 3.13.9 The Contractor shall provide and maintain temporary stairs, main ladders and runways for access to all areas for the use of all trades. The Contractor shall provide additional runways and ladders as may be required for the execution of the Contractor's Work. All such apparatus, equipment and construction shall meet all requirements for safety and all provisions of Federal, State or local laws and ordinances applicable thereto. Permanent stairs shall be erected as soon as possible, and the Contractor shall provide same with protective treads, handrails and shaft protection.

§ 3.13.10 The Contractor shall provide suitable toilet facilities, at locations approved by the Owner, for the use of all its employees and those of the Construction Team and shall maintain same in proper sanitary condition acceptable to the Owner. All temporary toilet facilities shall be removed upon completion of the Work. The Contractor, its

employees or other members of the Construction Team will not be permitted to use toilet facilities in the building under construction, or other buildings on or near the Project site.

§ 3.13.11 NOT USED

§ 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 and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

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

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

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the Project site, all staging areas, and surrounding area free from accumulation of waste materials or rubbish caused by the Work. At completion of the Work, the Contractor shall remove or cause to be removed from the Project site, all staging and surrounding areas all waste materials, rubbish, scaffolding, the Contractor's tools, construction equipment, machinery, surplus materials and other materials used on the Project site.

- .1** Construction debris and rubbish as generated by the Work shall be removed from the point of origin daily and not allowed to accumulate. It shall be deposited in a trash container provided on the site until hauled away. Scrap materials for reuse in temporary Work shall be segregated and properly stored, protected and covered as for new materials. The result of the above shall be the maintenance of a clean project, with a minimum of fire hazards. The Contractor shall establish and implement a clean-up routine.

§ 3.15.2 If the Contractor fails to keep the Project Site and all staging and surrounding areas clean as required by the Contract Documents and in accordance with the instructions of the Owner, the Owner may, following forty-eight (48) hours' notice, do so and the cost thereof shall be charged to the Contractor. Such charge may be deducted from the next payment owed the Contractor, or if the balance of any payments owed is insufficient to cover the amount owing, the Owner may send an invoice to the Contractor for payment, and the Contractor will pay the invoice upon demand.

§ 3.15.3 Unless the Contract Documents require a higher standard, the Contractor shall leave all Work installed or modified under the Agreement and all existing materials and surfaces affected by the Work and each area of the Project Site clean to the satisfaction of the Owner. This shall include at a minimum: complete dusting, sweeping, vacuuming, mopping, polishing, and other activities as necessary to remove all dust, dirt and other construction residues, and removal of all tools and equipment, construction debris, rubbish, and surplus materials.

§ 3.15.4 Immediately before turning any portion of the Project over to the Owner, the Contractor shall have all glass cleaned by professional window washers. Care shall be taken not to scratch any glass. Acid or other cleaning material which will injure or mar the surface or adjacent Work will not be allowed. Any damage resulting from glass cleaning shall be corrected by the Contractor, including the furnishing of new glass of same character and quality or the replacement of other Work damaged or disturbed.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect 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 indemnify and hold harmless the Owner and Architect from any and all costs, damages and losses, including, but not limited to, actual attorneys' fees, loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend and hold harmless the Owner, its Board of Education, its Board Members, in their official and individual capacities, its administrators, employees, agents, contractors, successors and assignees, Architect, Architect's Consultants and agents, and employees of any of them (collectively "Indemnitees") from and against claims, damages, fines, penalties, losses, costs and expenses, including but not limited to attorneys' fees (collectively "Losses"), from and against any and all claims, counter claims, suits, debts, demands, actions, judgments, liens, costs, expenses, damages, injuries and liabilities, including actual attorney's fees and actual expert witness fees arising out of or in connection with Contractor's performance of the services pursuant to this Agreement and/or from Contractor's violation of any of the terms of this Agreement, including, but not limited to: (i) the negligent acts or willful misconduct of the Contractor, its officers, directors, employees, successors, assignees, contractors, consultants, and agents; (ii) any breach of the terms of this Agreement by the Contractor, its officers, directors, employees, successors, assignees, contractors, consultants, and agents; (iii) any violation or breach of any applicable Federal, State or local law, rule, regulation, ordinance, policy and/or licensing and permitting requirements applicable to providing the services; or (iv) any breach of any representation or warranty by the Contractor, its officers, directors, employees, successors, assignees, contractors, consultants and agents under this Agreement. The Contractor shall notify the Owner by certified mail, return receipt requested, immediately upon actual knowledge of any claim, suit, action, or proceeding for which the Owner may be entitled to indemnification under this Agreement. This Section shall survive the expiration or earlier termination of this Agreement and shall not be limited by the Contractor's Insurance obligations contained in this Agreement.

§ 3.18.1.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, its Board of Education, its Board Members, in their official and individual capacities, its administrators, employees, agents, contractors, successors and assignees, the Architect, and the agents and employees of any of the them, harmless from any claims, liabilities, damages, losses and expenses, including without limitation, actual attorney fees and expenses incurred in litigating, arbitrating or settling any claim, action or arbitration, arising from, or in any way relating to, any failure of the Contractor, or any claim that the Contractor failed, to perform punctually or properly any of its obligations created by the provisions of the Contract Documents.

In addition, to the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner its Board of Education, its Board Members, in their official and individual capacities, its administrators, employees, agents, contractors, successors and assignees, from any claim, damage, loss, injury, or expense, including but not limited to actual attorney fees, incurred by the Owner related to any Hazardous Material or potentially Hazardous Material, waste, toxic substance, pollution, or contamination brought into the Project Site or caused by the Contractor or used, handled, transported, stored, removed, remediated, disturbed, or dispersed of by Contractor.

§ 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 RECORD DOCUMENTS

§ 3.19.1 The Contractor shall maintain at the Project Site on a current basis for review by the Owner, the Architect, and all members of the Construction Team, the Record Documents, which include: a record copy of all logs, reports, Contract Documents, and Record Drawings, in good order and marked to record all changes made during construction; all approved Shop Drawings, Product Data, Samples, and other Submittals; applicable handbooks; maintenance and operating manuals and instructions; and other related documents and revisions which arise out of the Contract Documents or the Work. As part of the Record Documents, the Contractor shall maintain records of principal building layout lines, elevations of the bottoms of footings, project floor levels and key site elevations certified by a qualified surveyor. The Contractor shall at all times make all records (excluding internal memoranda or reports, privileged communications and documents with incidental references to the Work, or documents which discuss multiple projects) available to the Owner and the Architect, and, at the completion of the Work, shall deliver all such Record Documents to the Owner neatly organized, bound and indexed. The Contractor shall monitor preparation of as-built Drawings by Subcontractors on a monthly basis and shall take corrective action as appropriate when as-builts are not being properly updated. The Contractor shall be permitted to retain a copy of the Record Documents for its own use after the Work is completed and, in any event, the Owner shall continue to provide access to the Record Documents, for the Contractor to inspect and copy.

§ 3.19.2 The Record Drawings shall be prepared and updated during the prosecution of the Work. The prints for Record Drawing use will be a set of blackline prints provided by the Architect to the Contractor at the start of construction. The Contractor shall maintain said set in good condition and shall use colored pencils or other methods reasonably acceptable to the Owner to mark-up said set with "record information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (v) such other information as the Owner may reasonably request.

§ 3.19.3 The Contractor shall keep note of all the deviations and discrepancies in the underground, concealed conditions and other items of construction and Work on field Drawings. At the completion of the Project the Contractor's notes on the record field Drawings shall be neatly transcribed onto a clean set of Drawings furnished by the Architect. The Contractor shall submit the final Record Drawings to the Architect for review.

§ 3.19.4 During construction, the Contractor shall maintain on the Project site, a separate, clean set of Drawings for the sole purpose of recording changes and actual 'as installed' information. This set shall be accessible for inspection by the Owner and the Architect at all times. The Contractor shall bring this set of Drawings to the scheduled construction progress meetings. The Contractor shall record all information as the Work progresses, clearly and neatly, in color and maintain it on a current basis as directed by the Owner and submit these Drawings to the Owner within thirty (30) days after Substantial Completion. As a general guide, the type of information to be recorded includes, but is not limited to: (i) revisions made except minor or non-critical dimensional changes, (ii) omissions, including Work omitted by Change Order or accepted alternates, (iii) exact dimensioned locations of concealed lines, (iv) locations of all control devices, (v) any additions to Work, (vi) changes in significant details, (vii) and any other information of a similar nature.

§ 3.19.5 Upon substantial completion of the project, the Contractor shall submit to the Owner the Contractor's mechanical and electrical coordination Record Drawings prepared during construction by the Contractor. Examples of such drawings include sheet metal ductwork drawings, piping drawings, fire protection piping drawings, electrical raceway drawings, and the like. Submission shall be on reproducible photo diazo mylar, velum or sepia medium. When the Contractor produces drawings by computer aided drafting, the Contractor shall also submit their coordination drawings on electronic data files compatible with AutoCAD computer software. All such documents shall contain the Owner's Project Number for identification purposes.

§ 3.20 WARRANTIES AND MANUALS

§ 3.20 Unless the Contract Documents require otherwise, the Contractor shall bind and turn over to the Owner two (2) sets of manufacturers' warranties and operating and/or maintenance manuals, instructions or schedules for all equipment and special materials requiring such. Such binders will clearly categorize and index each piece of equipment and material included, and shall be clearly marked noting "project specific" equipment, model numbers, and other applicable information. Such manuals will be collected and organized by the Contractor and submitted to the Owner at one time, prior to the issuance of the certificate of Substantial Completion.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 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.

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative: (i) during construction, (ii) until the final payment is due, and (iii) with the Owner's concurrence, from time to time during the period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction or Contractor's operations, or as otherwise agreed with the Owner, (i) to become generally familiar with the progress and quality of the portion of the Work completed, (ii) to endeavor to guard the Owner against defects and deficiencies in the Work, and (iii) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's Consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with

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

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

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8. The Architect will receive, review, and ensure that all written warranties and related documents required by the Contract and assembled by the Contractor are complete and correct before forward to the Owner, for the Owner's review and records pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

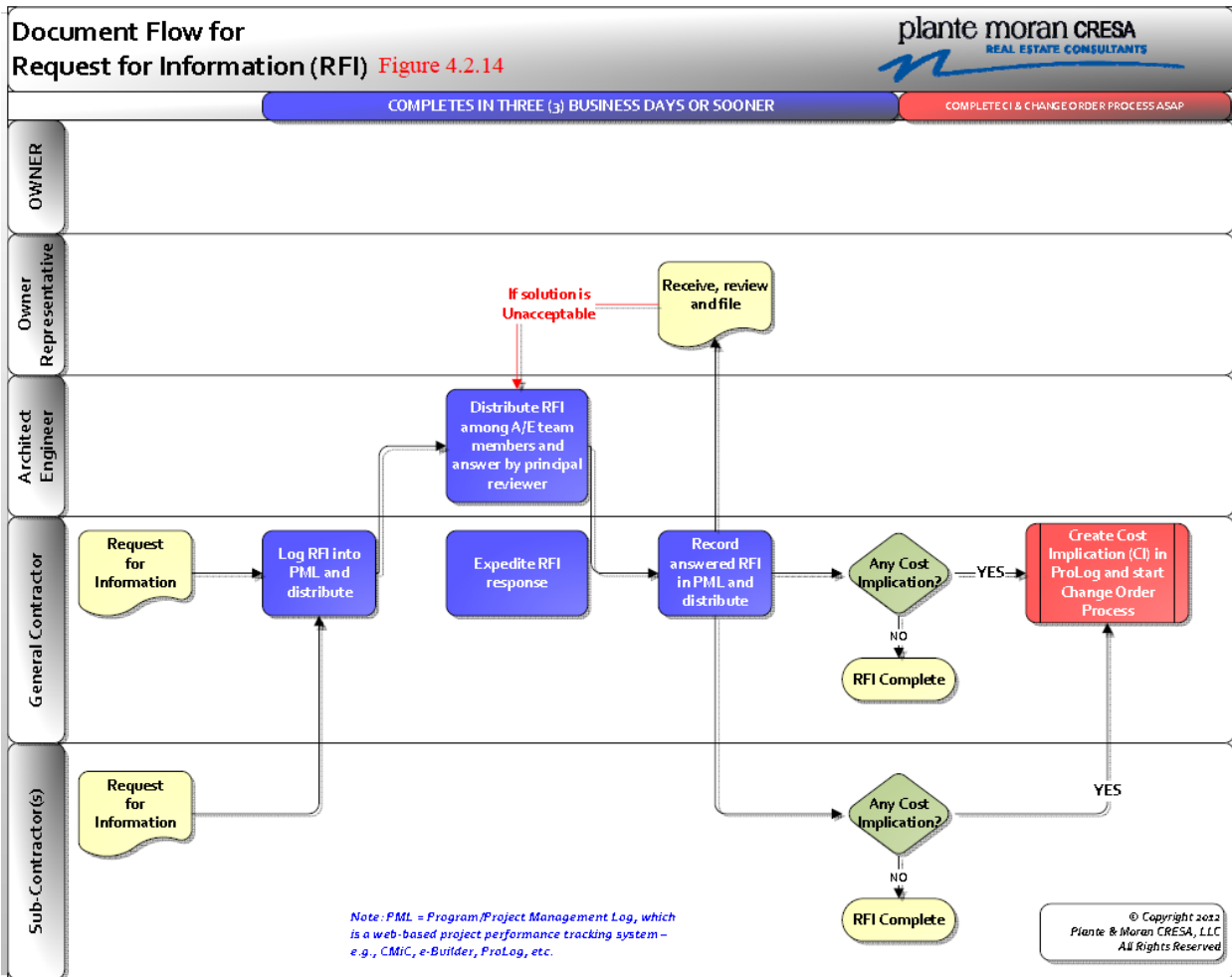
§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning the performance under and the requirements of the Drawings, Specifications, and other Contract Documents on written request of either the Owner or Contractor; provided however that the Contractor shall be responsible for reimbursing Owner, at Contractor's sole cost and expense, for Architect's fees for interpreting and deciding matters which the Architect determines to be clear and unambiguous. The Architect's response to such requests will be made in writing within any time limits established pursuant to Section 4.2.14. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Drawings, Specifications, and other Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith. The Contractor shall promptly comply, and cause all members of the Construction Team and Subcontractors to comply with the Architect's written interpretations and decisions, subject to its rights under Section 7.2 if any interpretation or decision changes one or more of the Drawings, Specifications, and other Contract Documents.

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

§ 4.2.14 The Architect will review and respond to requests for information or interpretation (RFI) about the Contract Documents or for approval of Submittals 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. Unless required otherwise in the Construction Documents, the Architect and Contractor shall follow and shall cause its Consultants, and all members of the Construction Team to follow the request for interpretation control process and schedule described in figure 4.2.14 below, *Document Flow for Request for Information (RFI)*.



ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor or subcontractors of a separate contractor.

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after receipt of Bids, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within fourteen (14) days to the Contractor in writing stating (i) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (ii) that the Architect requires additional time for review.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Construction 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 Construction Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.3.1 Work performed for the Contractor by a Subcontractor shall be performed pursuant to a written Subcontract, which shall (in addition to the requirements of Sections 5.3 and 5.4) contain provisions that:

- .1 requires that such portion of the Work be performed in accordance with the requirements of the Contract Documents;
- .2 requires timely submission of Subcontractor's applications for payment and ancillary materials in order to enable the Contractor to apply for payment in accordance with the provisions of Article 9;
- .3 waives all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance described in Article 11;
- .4 recognizes the rights of the Owner pursuant to the Contingent Assignment of Subcontracts contained in these General Conditions and require the Subcontractor (upon notice by the Owner that the Owner has terminated the Agreement with the Contractor pursuant to the terms of Article 14, and that the Owner has elected to retain the Subcontractor pursuant to the terms of its Subcontract with the Contractor) to complete the unperformed obligations under such Subcontract and, if requested by the Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Owner under its Subcontract in the manner in which it had been bound to the Contractor;
- .5 requires the Subcontractor performing labor at the Project Site to carry and maintain the insurance described in Article 11, unless otherwise approved by the Owner, and to deliver certificates of insurance to the Contractor prior to commencement of its portion of the Work;
- .6 includes the following sentence: "Owner is an intended third-party beneficiary of this Subcontract.";
- .7 requires dispute resolution in the manner provided in Article 15;
- .8 requires each Subcontractor to make all claims for changes or extensions of time to the Contractor strictly (not substantially) in the manner provided in the Agreement;
- .9 limits claims and damages in the manner provided in the Agreement; and
- .10 are in no way inconsistent with any provision of the Agreement.

Sub-subcontracts and Supply Contracts shall be subject to identical conditions, except: (i) suppliers that are not performing any Work on the Project Site are not subject to the insurance requirements described in Article 11; and (ii) Subcontractors and Sub-subcontractors may satisfy the insurance requirements described in Article 11 by being named

as an additional insured under the Contractor's insurance policies or, in the case of a Sub-subcontractor, by being named as an additional insured under a Subcontractors insurance policies.

§ 5.3.1.2 Upon request, the Contractor shall deliver a copy of any Subcontract, Sub-subcontract or Supply Contract to the Owner.

§ 5.3.2 COORDINATION OF SUBCONTRACTORS

§ 5.3.2.1 The Contractor shall provide supervisory, administrative, management, inspection and related services as required to properly coordinate, schedule and sequence the Work of the Subcontractors with each other (to avoid both duplication and omission of Work) and with the activities and responsibilities of the Contractor, the Owner and the Architect to complete the Work in accordance with the requirements of the Contract Documents with respect to cost, time and quality and to ensure that the other goals of the Work are otherwise met or exceeded.

§ 5.3.2.2 The Contractor shall schedule and conduct with the Subcontractors and Sub-subcontractors construction progress and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute minutes. Construction progress meetings will be conducted by the Contractor weekly unless otherwise directed by the Owner and attended by all Subcontractors and Sub-subcontractors whose Work has not been completed. Executive level progress meetings will be held on a monthly basis. All progress meeting minutes shall be provided to the Owner by the Contractor within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the Owner. The Owner will act promptly in providing its approval. The Contractor in consultation with the Owner and the Architect shall develop, implement and maintain a process of "partnering" involving both of them and all Subcontractors and Sub-subcontractors so that (i) the goals and objectives of each are clearly understood and accepted by all, and (ii) potential problems, bad feelings, personal difficulties and the like are identified and resolved promptly.

- .1 The partnering objective shall be to identify and develop mutual goals, which may include, as examples, achieving Value Engineering savings, meeting the financial goals of each party, limiting cost growth, limiting review periods for contract submittals, avoiding and resolving disputes, facilitating early completion and minimizing lost time because of injuries. The partnering process shall emphasize open communication, collegiality and cooperation among all parties, as well as prompt and efficient dispute resolution at the lowest appropriate level of management. Claims and disputes not resolved in the partnering process shall be subject to the procedures specified in Article 15.

§ 5.3.2.3 Schedule of Subcontractors' Work. The Contractor shall require each Subcontractor to agree to be contractually bound to the requirements of the applicable Bid Package Construction Schedule and the Construction Schedule (or if the Construction Schedule has not been prepared, then the Master Design and Construction Schedule). The Contractor shall require each Subcontractor to agree to cooperate with the Contractor in developing a detailed CPM manpower-based schedule applicable to its portion of the Work within thirty (30) days after award of Contract unless otherwise specified. The Contractor shall assist in the development of all Subcontractor schedules and shall prepare such schedules if any Subcontractor fails to do so. The Contractor shall require all Subcontractors to meet as often as necessary with the Contractor to complete their detailed CPM schedules. However, the Bid Package Construction Schedule and the Construction Schedule (or if the Construction Schedule has not been prepared, then the Master Design and Construction Schedule) will take precedence over any schedules prepared by Subcontractors with respect to time of completion for each bid package. If any such schedule indicates that additional time or effort will be required to maintain these schedules, the Contractor, Subcontractor shall agree to work additional time, including weekends if necessary, or to add manpower, all at no extra cost to the Owner. The Contractor will require all their Subcontractors to include the requirements in Sections 5.3.2.3 and 5.3.2.4 in their Sub-subcontractor contracts.

- .1 The Contractor shall prepare and deliver to the Owner and each of the Construction Team that are part of a particular bid package a "short term/two week look ahead schedule," and it will take appropriate action to enforce compliance therewith.

§ 5.3.2.4 Subcontractors' Performance. The Contractor shall ensure satisfactory and timely (with reference to both Milestone and Substantial Completion Dates) performance from each of the Subcontractors. The Contractor shall take appropriate measures when any Subcontractor is not performing its obligations satisfactorily.

§ 5.3.2.5 Payments to Subcontractors. Upon award of the Subcontract, the Contractor shall have each Subcontractor prepare and submit a Schedule of Values allocating that portion of the Cost of the Work attributable to its Subcontract to the various portions of the Work. Each Schedule of Values shall be prepared in a form and substance acceptable to

the Contractor (which form shall previously have been approved by the Owner) and supported by such data as may be necessary to substantiate its accuracy. The Contractor shall develop and implement procedures for the review and processing of applications by Subcontractors for progress and final payments. Payment packages shall include, but shall not be limited to, each of the following documents: schedule of values, sworn statements, and appropriate forms of full or partial construction lien waivers or other similar waivers and releases of claims.

§ 5.3.2.6 Safety Programs. The Contractor shall provide a general review of safety programs developed by each of the Subcontractors, including verification that each Subcontractor has submitted its report of the recommended safety precautions and programs, as required by the Contract Documents. If the Contractor observes a safety violation, the Contractor shall require a Subcontractor to correct it. After written notification to the Subcontractor to correct the safety violation, if the Subcontractor does not correct the problem in a timely fashion, the Contractor shall cause the Work to be corrected by other means. The performance of such services by the Contractor shall not relieve the Subcontractors of their responsibilities for performance of the Work and for the safety of persons and property, and for compliance with all Federal, State, and local statutes, rules, regulations and orders applicable to the conduct of the Work. The Contractor shall conduct regular safety meetings with Subcontractors' superintendents to ensure the Subcontractors' compliance with Federal, State, or local statutes, rules, and regulations relating to the workers' safety or any other aspect of the Work.

§ 5.3.2.7 Work. The Contractor shall determine in general that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents, and shall guard the Owner against defects and deficiencies in the Work. As appropriate, the Contractor shall require special inspection or testing, or make recommendations to the Architect regarding special inspection or testing, of Work not in accordance with the provisions of the Contract Documents whether or not such Work has been then fabricated, installed or completed, and shall reject Work which does not conform to the requirements of the Contract Documents. The Contractor shall coordinate any inspections which may be required by any governmental agencies.

§ 5.3.2.8 Interpretation. The Contractor shall consult with the Architect and the Owner if any Subcontractor requests interpretations of the meaning and intent of any of the Contract Documents, and shall assist in the resolution of questions, which may arise.

§ 5.3.2.9 Insurance Certificates. The Contractor shall receive certificates of insurance from the Subcontractors, and shall review such certificates for compliance with the requirements of the Contract Documents, and shall forward the original certificates to the Owner's Designated Representative. No member of the Construction Team shall be permitted to commence any portion of the Work or have a presence at the Project Site without complying with all insurance requirements of the Contract Documents. The Contractor shall monitor the same to ensure the certificates of insurance remain current, and shall advise the Subcontractors of the impending expiration of their respective certificates, but the failure of Contractor to give such advice shall not, as between the Contractor and any of the Subcontractors, excuse the obligation of the Subcontractors to maintain current, unexpired certificates.

§ 5.3.2.10 Systems Readiness. The Contractor shall, in the company of the Architect and the Owner's maintenance personnel, observe the Subcontractors' evaluation of utilities, operational systems and equipment for readiness, and shall assist in their initial start-up and testing.

§ 5.3.2.11 Contractor and Subcontractors' Warranty Acknowledgment. The Contractor shall execute and deliver to the Owner, and shall cause anyone giving warranties that is contractually bound to the Contractor to execute and deliver to the Owner, the following Warranty Acknowledgment before a Certificate of Final Completion is issued:

WARRANTY ACKNOWLEDGMENT

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

This Warranty shall be in addition to the terms of any other warranty or longer period of obligation specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any general warranty and is not in lieu of any of them. This warranty shall not be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time which any proceeding may be commenced.

§ 5.3.2.12 Products.

- .1 To the extent a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall require the Subcontractor to present an affidavit from the manufacturer when requested by the Owner or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Owner or specified, support test data shall be submitted to substantiate compliance.
- .2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made. However, the Contractor may suggest substitutes as part of its Value Engineering responsibilities

§ 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 in writing; 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 NOT USED

§ 5.4.2.1 NOT USED

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right, but shall have no obligation, to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. The Contractor shall promptly notify the Owner in writing upon becoming aware that such independent action will in any way compromise the Contractor's ability to meet its responsibilities under the Contract Documents. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Contractor shall coordinate the activities of the Owner's own forces and of each separate contractor with the Work of members of the Construction Team, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual

agreement. The resulting Construction Schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised. The Construction Time and Contract Sum or Guaranteed Maximum Price will be adjusted accordingly, if as agreed by Contractor and Owner.

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

§ 6.1.5 When the Contractor's Work is dependent upon the work of the Owner or the Owner's separate contractors, the Contractor shall notify the Owner of such condition in ample time to prevent any delays to the Project's progress.

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

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

§ 6.2.6 Subject to the provisions of, and rights to recover from, any property insurance that the Owner is responsible to maintain, the Contractor shall, at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, or use of any contingency or otherwise, promptly remedy damage caused by any member of the Construction Team to completed or partially completed construction or to property of the Owner or separate contractors.

§ 6.2.7 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may assume responsibility therefore and the Owner and Architect will in their reasonable discretion allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

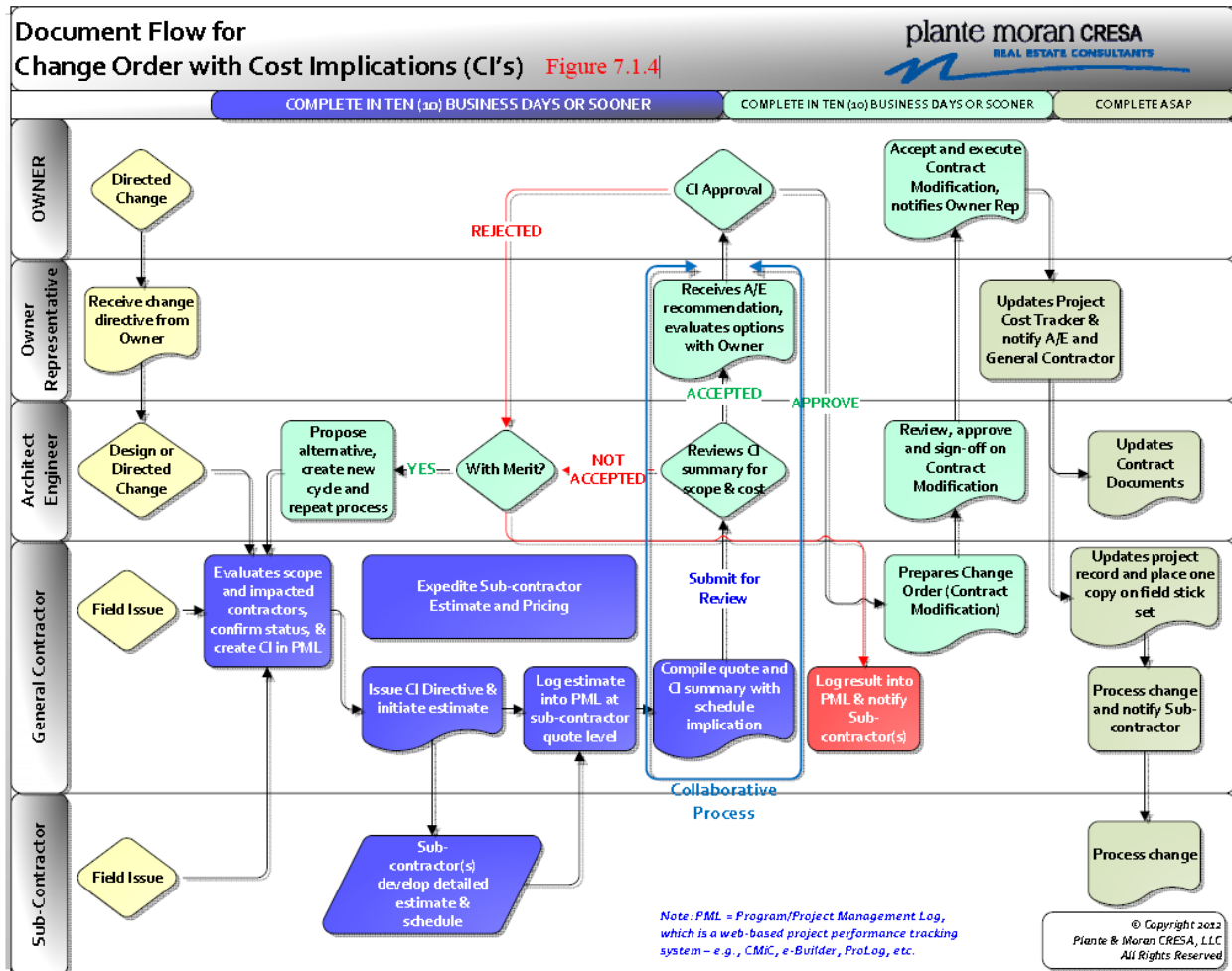
§ 7.1 GENERAL

§ 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, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone with the Owner's prior approval.

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

§ 7.1.4 Unless required otherwise in the Construction Documents, the Architect and Contractor shall follow and shall cause their respective Consultants, Subcontractors and/or Suppliers to follow the change order process and schedule described in Figure 7.1.4 below, *Document Flow for Change Order with Cost Implications (CI's)*.



§ 7.1.5 To the extent provided in Section 11.4, changes in the Work may be made without notice to the Contractor's sureties, and absence of such notice shall not relieve such sureties of any of their obligations to the Owner. If notice of any extra Work or change in the Work affecting the general scope of the Work or the provisions of the Contract Documents is required by the provisions of any bond, to be given to any surety issuing such bonds, the giving of any such notice shall be the Contractor's sole responsibility.

§ 7.2 CHANGE ORDERS

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

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

§ 7.2.2 Written agreement by the Owner, Architect and Contractor on any Change Order shall constitute a final settlement of and a waiver of and permanent bar to all claims by Architect or Contractor relating to the change in the Work which is the subject to the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum or Guaranteed Maximum Price and the Construction Time. The Contractor shall include the Work covered by such Change Orders in its Applications for Payment as if such Work were originally part of the Contract Documents.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Construction 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 Construction Time being adjusted accordingly. Notwithstanding anything to the contrary herein, the Construction Time shall be adjusted only if the Contractor demonstrates to the Owner that the changes in the Work required by the Construction Change Directive adversely affect the critical path of the Work.

§ 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 or more 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 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted, unless the Contractor provided such unit prices as a part of a competitive bid, in which case the unit price may not increase.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Construction Time. Contractor agreements to a Construction Change Directive shall require a follow-up writing or signature as contemplated in Section 7.3.6.

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine, with the Owner's approval, the method and 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, but not to exceed ten percent (10%) on changes in the Work performed by a Subcontractor and five percent (5%) for changes in the work performed by the Contractor. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Actual costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

- .3 Actual rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; and
- .4 Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

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

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

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

§ 7.3.11 In no event shall the Contractor be entitled to receive, and the Contractor hereby waives the right to receive any payment or any extension of time for additional or changed work, whether partially or fully completed or simply proposed, unless such additional work is authorized by a written Change Order or Construction Change Directive signed by the Owner, nor shall the Contractor be obligated to proceed with any such work. Only the Owner shall have the right to issue a written Change Order or Constructive Change Directive to the Contractor authorizing an addition, deletion or other revision in the scope of the Work and/or an adjustment in the Contract Sum or Guaranteed Maximum Price or the Construction Schedule.

§ 7.4 MINOR CHANGES IN THE WORK

The Owner, or the Architect after consulting with the Owner, may order minor changes in the Work not involving adjustment in the Contract Sum or Guaranteed Maximum Price or an extension of the Construction Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Architect, with the Owner's written approval, has the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly. Architect shall not, without written approval of Owner, order changes in the Work under this Section 7.4 that (i) are inconsistent with the intent of the Contract Documents; (ii) render the Drawings and Specifications not in material conformity with the Work; or (iii) materially affect the quality, utility or general aesthetics of the Work or any component, or result in the use of materials or equipment which are not equivalent to or better than the materials and equipment set forth in the Drawings and Specifications prior to such change.

§ 7.5 CONTRACTOR CHANGE ORDER REQUESTS

§ 7.5.1 In addition to the Contractor's remedies under Article 8 in the case of delays (which shall be governed solely by Article 8 and to which this Section 7.5 shall not apply), if the Contractor believes any act, error or omission of the Owner or persons for whom Owner is responsible, including but not limited to the Architect and Owner's separate contractors, constitutes a change in the Work entitling it to additional compensation, it shall within twenty-one (21) days after the date the Contractor discovers, or should with the exercise of appropriate diligence have discovered, the pertinent act, error or omission of the Owner (provided that the necessity of extra cost and/or time is already determinable, even if such extra cost and/or time has not yet been incurred), submit a Contractor Change Order Request stating the amount of the additional compensation to which it is entitled and justifying the request. The Contractor shall submit such additional information as may reasonably be required by the Owner to evaluate the Contractor Change Order Request. The Owner shall evaluate the request within ten (10) days and advise the Contractor within

such ten (10) day period whether to grant, grant in part, or deny the Contractor Change Order Request. Any additional compensation granted shall be recorded in the form of a Change Order. If the Contractor disagrees with the Owner's decision, the Contractor shall pursue the remedies it has under Article 15. Failure of the Contractor to timely submit a Contractor Change Order Request strictly (not substantially) in accordance with the requirements of this Section 7.5 shall constitute a waiver of and shall forever bar any recovery arising out of the pertinent act, error or omission of the Owner, even if the Owner was not prejudiced thereby.

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 and shall have the same meaning as defined in Section 1.1.13.

§ 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 Construction 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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.2.3 The Contractor shall see to the diligent, expeditious performance of the Work, with adequate resources so that all the Work will be completed within the Construction Time. The Contractor shall require overtime, multiple shifts and any other action necessary to complete the Work within the Construction Time, all without additional cost to the Owner except as otherwise specifically provided in Section 8.4 or in a Change Order or Construction Change Directive. The Contractor shall not, without the Owner's prior written approval, reschedule or re-sequence the Work so that an action, approval, or activity of the Owner moves onto the critical path or otherwise becomes critical to the Construction Time so long as such action, approval, or activity would not in fact have been critical but for the rescheduling or re-sequencing.

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

- .1** The Contractor shall not be entitled to an adjustment in its compensation in connection with Additional Measures required by the Owner under or pursuant to this Article 8 except as specifically provided in Section 8.4.2 or in a Change Order or Construction Change Directive.
- .2** The Owner may exercise the rights furnished it under or pursuant to this Article 8 as frequently as necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.
- .3** Subject to reasonable prior notice and opportunity to cure, and except to the extent caused by Owner Delay, the Owner shall also have the right to offset against any amounts then or thereafter due to the Contractor, or to be reimbursed by the Contractor for, any costs incurred as a result of an increase in the Owner's own labor force or for overtime, Saturday, Sunday, and/or holiday work as a result of implementing Additional Measures for which the Contractor is responsible to pay.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 Except as otherwise provided in this Section 8.3, the Contractor shall be fully responsible for the timely completion of the Work in accordance with the Construction Schedule. The Contractor shall cause all members of the Construction Team to meet all Milestone Dates in the Construction Schedule. The Contractor agrees to use its best efforts to avoid the occurrence of any cause for delay, to avoid any extension of performance dates, and to mitigate the effect of any delay that does occur. The Construction Time will be extended only under the exact circumstances described in this Section 8.3 and then if and only if the Contractor complies strictly (not substantially) with the requirements of this Section 8.3.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Notices in connection with delays shall be made by the Contractor to the Owner in accordance with this Section 8.3.2. The Contractor shall use its best efforts to provide verbal notice to the Owner within twenty-four (24) hours after the commencement of a delay. It must in any event do so as soon as possible and not later than three (3) days after commencement of the delay. Any verbal notice given shall be confirmed in writing within four (4) days. If the Contractor fails to deliver verbal notice within three (3) days after the commencement of a delay, it shall not be entitled to any relief pertaining to the period of time before it gave verbal notice. If the Contractor fails to confirm any verbal notice within four (4) days after the verbal notice was given, it shall not be entitled to any relief for the period of time beginning after the passage of such four (4) days and ending when the confirmation is actually received by the Owner. And, if the Contractor fails to provide notice in writing within ten (10) days after the commencement of a delay or to confirm any verbal notice within ten (10) days after the verbal notice was given, the Contractor shall be barred from seeking any relief whatsoever relating to the delay. Immediately following the commencement of any such cause for delay, representatives of the Contractor and Owner shall confer for the purpose of determining the probable length of the delay and a course of action which would end or eliminate the occurrence or event which is causing delay. The Contractor shall also within twenty-one (21) days after the cessation of such delay notify the Owner of the date of such cessation and the total amount of delay, if any, in performance dates which the Contractor is entitled to claim by reason of any such occurrence. If the Contractor intends to request an extension of time for any delay, it shall accompany the notice of cessation of delay with a Change Order Request stating the specific extension or adjustment requested and justifying the reason for the request. The Contractor shall thereafter submit such additional information as may be required by the Owner to evaluate the Change Order Request. The Owner shall decide whether to grant, grant in part or deny the Change Order Request. Any extension of time or adjustment granted shall be memorialized in the form of a Change Order. Acceptance and execution of any such Change Order by the parties shall constitute an accord and satisfaction that forever bars any and all claims arising out of or in connection with the delay giving rise to the Change Order. If the Contractor disagrees with the Owner's decision, it may pursue the remedies available to it under Article 15. However, failure of the Contractor to timely assert any alleged delay or claim for extension strictly (not substantially) in accordance with the provisions of this Section 8.3.2 shall constitute a waiver of and shall forever bar that claim, even if the Owner was not prejudiced thereby.

§ 8.3.3 Except in the case of changes to the Work covered by Article 7, the Contractor shall not be entitled to an extension of time unless the event or circumstance giving rise to a delay constitutes a Force Majeure Event and the Contractor can demonstrate that the activity delayed will result in a Critical Delay.

- .1 A delay is a "Critical Delay" if and only to the extent it adversely affects the critical path of the Work as established in the Construction Schedule or subsequent Subcontractor schedules that fall within the Construction Schedule. Under this Subsection 8.3.3.1, when two (2) or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delay(s) would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Construction Time should be adjusted, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.
- .2 Subject to the restrictions contained in Section 8.3.3.4 below, "Force Majeure Event" means only the following: (i) strikes, lockouts, or picketing (legal or illegal) of an area-wide, trade-wide, Owner-wide, or industry-wide nature (a strike, lockout or picket (legal or illegal) specific to the Project Site, or directed at the Contractor or a Subcontractor shall not be considered an area-wide, trade-wide or industry-wide strike, and is not a Force Majeure Event unless it occurs after the Contractor has used its best efforts to avoid it); (ii) governmental action and condemnation; (iii) riot, civil commotion, insurrection, and war; (iii) fire or other casualty, accident, acts of God or the public enemy; (iv) unusual adverse weather conditions not reasonably expected for the location of the Work and the time of the year in question documented by data substantiating such weather conditions; (v) unavailability of fuel,

power, supplies or materials; (vi) the passage or unexpected interpretation or application after the Commencement Date of the Work of any statute, law, regulation or moratorium of any governmental authority; or (vii) Owner Delay.

- .3 The Contractor acknowledges that in preparing the Construction Schedule and in agreeing to the times or dates of completion required by the Contract Documents it will make a reasonable allowance for such events that are not Force Majeure Events.
- .4 Adjustments in the Construction Time will be permitted for any Force Majeure Event, including an Owner Delay, only to the extent such delay (i) is not caused or contributed to, and could not have been anticipated, by the Contractor using the degree of diligence required by the Contract Documents, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and (iii) is of a duration of not less than one (1) day.

§ 8.3.4 The Owner's exercise of any of its rights under the Contract Documents or the Owner's good faith exercise of any of its remedies, including requirement of correction or re-execution of any Defective Work, regardless of the extent, number or frequency of the Owner's good faith exercise of such rights or remedies, shall not under any circumstances be construed as unreasonable interference with the Contractor's performance of the Work or an event of default.

§ 8.3.5 The Contractor shall use its best efforts to mitigate the effects of any delay, whether or not it is caused by a Force Majeure Event.

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

§ 8.3.7 If the Contractor, but for a Force Majeure event or Owner Delay resulting in a Critical Delay, would have completed the Work prior to the expiration of the Construction Time, the Contractor shall not be entitled to recovery of damages arising out of any event or delay whatsoever which prevented such early completion of the Work, provided, however, that this provision shall not preclude recovery of delay damages by the Contractor pursuant to Section 8.4.2 below to the extent a delay causes it to complete the Work after the scheduled completion date.

§ 8.4 NO DAMAGE FOR DELAY

§ 8.4.1 Except only as provided in Section 8.4.2 below, an extension in the Construction Time or adjustment of the Construction Schedule, to the extent permitted under Section 8.3, and the Contractor's rights in connection with a suspension of the Work, as provided in the Agreement, shall be the sole and exclusive remedies (in lieu of all other remedies whatsoever) of the Contractor for any delay, interference, hindrance in the performance of the Work, loss of productivity, manpower inefficiencies, impact damages and similar claims and damages, whether or not contemplated by the parties. Except only as provided in Section 8.4.2, in no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Contractor hereby expressly waives and covenants and agrees not to assert any claims against the Owner for any damages, costs, losses or expenses of any nature whatsoever which any member of the Construction Team may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any act or omission of the Owner, its representatives or agents, it being understood and agreed that their sole and exclusive remedy in such event shall be an extension of the Construction Time, but only in accordance with the provisions of this Article 8.

§ 8.4.2 In the event of Owner Delay, the Contractor shall be entitled to an equitable adjustment in the Contract Sum or Guaranteed Maximum Price. This adjustment shall be based solely upon and limited to additional direct out-of-pocket expenses to the extent they are incurred directly as a result of the Owner Delay. Without limiting the generality of the foregoing, such out-of-pocket expenses shall be calculated on an "actual cost" basis, and shall exclude home office expense and other overhead, profit and the value of lost opportunities. However, the Contractor shall use its best efforts to avoid or reduce delay damages to any member of the Construction Team caused by Owner Delay.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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.

§ 9.2 SCHEDULE OF VALUES

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

§ 9.2.1 Unless otherwise provided in the Contract Document, the Contractor shall include a separate allocation for project closeout in the schedule of values. The following scheduled values are not part of retainage, and shall be listed on the Application for Payment:

As-Built (Record Drawings) Documents	1.0% of Contract Sum or Guaranteed Maximum Price
Training and O&M Manuals	1.0% of Contract Sum or Guaranteed Maximum Price
Attic Stock Materials	0.5% of Contract Sum or Guaranteed Maximum Price
Punchlist Completion	2.0% of Contract Sum or Guaranteed Maximum Price
Warranty and Guaranty Documents	0.5% of Contract Sum or Guaranteed Maximum Price

§ 9.3 APPLICATIONS FOR PAYMENT

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

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. A request for payment of sums related to Work regarding Construction Change Directives shall, unless qualified in writing at the time of request, constitute full and complete consent to the Construction Change Directive(s) and to the issuance of a Change Order.

§ 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 material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor must provide copies of its insurance certificates, bonds, and the same for all of the Subcontractors and Sub-subcontractors prior to submitting the first Application for Payment, unless required to be submitted sooner by the Owner or the Contract. The Contractor shall submit with each monthly Application for Payment (i) an Affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the previous application was submitted and the Owner might in any way be responsible have been paid or otherwise satisfied, and (ii) a release or waiver of liens arising out of the Contract from each Contractor and/or Subcontractor, materialmen, supplier and laborer or the Contractor addressing all previous Applications for Payment submitted for the Project.

§ 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. Payment to Contractor for materials stored off site is discouraged. When circumstances indicate that the Owner's best interest is served by off-site storage, the Contractor shall make written request to the Owner for approval to include such material costs in his next progress payment.

§ 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, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

§ 9.3.3.1 NOT USED

§ 9.3.3.2 NOT USED

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

§ 9.3.5 The Contract Sum or Guaranteed Maximum Price includes all applicable taxes and shall not be changed as the result of the Contractor's failure to include any applicable tax, or as a result of any change in the Contractor's tax liabilities.

§ 9.3.6 Each Application for Payment shall be accompanied by the following, all in form and substance reasonably satisfactory to the Owner:

- .1 a duly executed and acknowledged sworn statement in statutory form with all required information provided, together with properly notarized sworn statements, current through the previous draw, from the Contractor and all of the Subcontractors; and
- .2 except as otherwise provided, duly executed unconditional releases in the form required by the Owner establishing payment or satisfaction of all obligations as reflected on the sworn statements referred to in Section 9.3.6.1, provided, however, that the Contractor may furnish with each Application for Payment applicable waivers of lien or releases and properly notarized sworn statements covering the immediately preceding Application for Payment, as opposed to the current Application for Payment, (i.e., 30 day lag), provided Final Payment shall not be forthcoming until final construction lien waivers or releases from all members of the Construction Team have been delivered.
- .3 In addition to the final construction lien waiver, the Owner may require the Contractor and Subcontractors to provide a signed and notarized affidavit that releases and discharges the Owner and Owner's agents from all liability to the Contractor and Subcontractor, which has arisen or which shall arise in connection with any work performed or materials delivered to the Project.
- .4 A written narrative summarizing the progress of the Project, including behind schedule Work that may adversely affect the critical path of the Work as established in the Construction Schedule or subsequent Subcontractor schedules that fall within the Construction Schedule. If such behind schedule Work would or could potentially affect the timely completion of the Work, the Contractor must also include a recovery plan describing in sufficient detail of overtime, multiple shifts and any other measures necessary to complete the Work within the Construction Time.
- .5 An updated Schedule of Value, which unless objected to by the Architect shall be used as a basis for reviewing the Contractor's Application for Payment.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate

for Payment will not be a representation that the Architect has (i) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (ii) reviewed construction means, methods, techniques, sequences or procedures, (iii) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (iv) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Construction Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 failure to have supplied operations and maintenance manuals, Record Documents, schedules, cost projections, and/or other information that may be required by other sections of the Contract Documents on a timely basis;
- .9 any other failure of the Contractor to perform its obligations under the Agreement; or
- .10 stop work notices.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers 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 Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 If the Contractor disputes any determination by the Owner or Architect with regard to any Certificate for Payment, the Contractor shall nevertheless continue to expeditiously perform the Work and such dispute shall provide no basis for any manner of suspension of the Contractor's performance of the Work.

§ 9.6 PROGRESS PAYMENTS

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

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment 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 to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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

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

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall not be withheld 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.

§ 9.6.8 Owner shall retain out of each progress payment a "Retainage" as provided in Section 9.6.8 of the Agreement. Retainage will be paid upon Final Completion and acceptance of the Work in accordance with Section 9.10 of these General Conditions. Upon mutual agreement of the Owner, the Architect and the Contractor, payment in full may be made to Subcontractors whose Work is fully completed during early stages of the Project. The Contractor acknowledges and agrees that payments by the Owner shall only be made in respect of Applications for Payments, or portions thereof, reasonably approved by the Owner. If the Contractor disputes any good faith determination by the Owner with regard to any Certificate of Payment, or amount paid by the Owner in respect thereof, the Contractor shall nevertheless expeditiously continue to prosecute the Work while such dispute is being resolved in accordance with the provisions of Article 15.

§ 9.6.9 Whenever the Owner reasonably determines, after notice to the Contractor, that there is a basis for concern that payments properly owing to any Subcontractor, Sub-subcontractor, supplier, or laborer are not being made on a timely basis, the Owner may elect, but shall not be obligated, to make payments to the joint order of the Contractor and such Subcontractor, supplier or laborer with any such payments satisfying any payment obligation otherwise owing by the Owner to the Contractor. The Owner may also elect at any time to require that payments be made through a construction escrow, in which event the Contractor shall supply all customary forms and indemnities as may be required to satisfy the conditions to disbursement established by the applicable escrowee. All requirements relating to payments and retainages, and applicable submittals to be made by the Contractor.

§ 9.6.10 Whenever the Owner reasonably determines, after notice to the Contractor, that there is a basis for concern that payments properly owing to any Subcontractor, Sub-subcontractor, supplier, or laborer are not being made on a timely basis, and the Owner elects to make payments to the joint order of the Contractor and such Subcontractor, supplier, or laborer with any such payments satisfying any payment obligation otherwise owing by the Owner to the Contractor, the Owner shall be able to back charge the Contractor twenty-five dollars (\$25.00) for each such issued joint checks to partially defray Owner's administrative time and expenses. If the Owner and Contractor agree to establish a construction escrow payment account, the Owner shall be able to back charge the Contractor for reasonable administrative time and expenses for establishing and administering such an escrow account. The Owner shall be able to deduct such back charges from payment(s) to the Contractor.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Construction Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work shall not be considered suitable for Substantial Completion review until all systems included in the Work are properly and operationally constructed in accordance with the Contract Documents, all required governmental inspections and certifications have been made and posted, training of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract Documents are in place. The only remaining Work shall be minor in nature, so that the Owner could occupy the building on the date of Substantial Completion and completion of the Work by the Contractor would not materially interfere or hamper the Owner's (or those claiming by, through or under Owner) normal operations. At Substantial Completion, the Contractor attests that all remaining Work is solely of a Punchlist nature and will be completed within forty five (45) consecutive calendar days.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a punchlist of items to be completed or corrected prior to final payment. Failure to include an item on such punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. *(Also see Section 9.10.7)*

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall 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 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.

§ 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 as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (i) 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, (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (iii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (iv) consent of surety, if any, to final payment and (v), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, 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. If such lien 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 such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed 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 surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 any defect or condition which is latent or not reasonably discoverable at the time of final payment;
- .5 Owner's claims for indemnification; or
- .6 Claims about which the Owner has previously given notice to the Contractor.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material 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 The amount of the Final Payment shall be the Contract Sum or Guaranteed Maximum Price less the amount paid to date. If the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Contractor shall immediately reimburse the difference to the Owner.

§ 9.10.7 Project Closeout. The requirements for Project Closeout begin at the start of a project. This section outlines the integration of the closeout process into the Construction Phase. Project closeout requirements generally comprise of the following:

- Certificate of Substantial Completion by the Architect
- Certificate of occupancy, including proof of all final/closed inspection permits

Operation & Maintenance Manuals
As-Built (Record) Drawings
Training of Owner's Personnel
Attic Stock Materials
Documents – Warranty, Asbestos free, Smoke & Flame Spread, etc.
Punchlist Completion (signed by the Architect and the Owner)
Copies of Shop Drawings, Product Data and Samples

§ 9.10.7.1 Operations and Maintenance Manuals and Training

- .1 Upon reaching seventy-five percent (75%) completion according to the Subcontractor's Application for Payment, The Contractor shall cause Subcontractors to submit to the Owner via the Contractor Operations and Maintenance Manuals and record copies of submittals.
- .2 The Contractor shall cause Subcontractors to schedule and conduct training for Owner personnel as specified. Training sessions shall include an agenda, video tape of the session, a sign-in sheet to document attendance, and documentation for the trainees. Each Subcontractor shall submit the video tape (labeled), attendance sign in sheet, and training documentation to the Contractor in the same quantities required for the Operations and Maintenance Manuals.
- .3 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the Operations and Maintenance Manuals and training of Owner's operating personnel.

§ 9.10.7.2 As-Built (Record) Drawings

- .1 The Contractor shall cause all Subcontractors to review As-Built Drawings with the Contractor on a weekly basis.
- .2 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the final As-Built Drawings.
- .3 Where the governmental and/or municipal agency/agencies having jurisdiction over the Project requires a certified (signed and sealed by a Registered Professional Engineer) set of civil and utilities As-Built Drawings of the Project, the Contractor shall deliver to the agency/agencies the necessary As-Built Drawings that is acceptable to the agency/agencies and provide one copy to the Owner.

§ 9.10.7.3 Attic Stock Materials

- .1 Upon reaching ninety percent (90%) completion according to the Subcontractor's application for payment, the Contractor shall cause the Subcontractors to turn over to the Owner via the Contractor all stock parts and attic stock materials.
- .2 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the required attic stock materials.

§ 9.10.7.4 Documents – Warranty, Asbestos Free, Smoke & Fire Spread, etc.

- .1 Upon reaching ninety percent (90%) completion, according to the Subcontractor's Application for Payment, the Contractor shall cause the Subcontractors to submit to the Owner via the Contractor all required documents.
- .2 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the required documents.

§ 9.10.7.5 Punchlist

- .1 One (1) week before Substantial Completion, Subcontractors shall submit to the Contractor a complete Punchlist and a list of incomplete items. The list shall include room number, description of work, and date for completion.
- .2 The Contractor shall review the Subcontractor's list and add items, if necessary. In the event that Contractor's list comprises 25% or more of the items then the Subcontractors list, then at the Contractor's sole discretion, a review fee of up to five hundred dollars (\$500) may be deducted from the Subcontractor's Contract Sum and paid to the Contractor. For example, if a Subcontractor's list has 20 items, and after reviewing the Contractor finds an additional 6 items (which exceeded 25% more items), the Contractor shall be entitled to receive a review fee.
- .3 Punchlists prepared by the Architect or Owner will be distributed to the Subcontractors. Subcontractors will be given the opportunity to complete the items within fourteen (14) days of receipt of lists. Upon completion, the Subcontractor shall conduct a walk-through with the Contractor, Architect, and Owner to confirm satisfactory completion.

- .4 Payment in an amount no less than four (4) times the estimated value of Punchlist items, as determined by the Contractor, and Architect will be withheld until the Punchlist is complete.
- .5 In the event the Punchlist is reported complete; but found not to be complete, at the Contractor's sole discretion, an amount of up to one thousand dollars (\$1,000) may be deducted from the Contract Sum owing to the Subcontractor and paid to the Contractor. If after fourteen (14) days, the Punchlist is still not complete or incomplete items are discovered during a walkthrough, the Owner and/or Contractor may immediately complete the items. The Owner and/or Contractor shall deduct the costs to complete the Punchlist from the amount owing the Subcontractor, including reasonable fee for supervision, plus up to two thousand five hundred dollars (\$2,500) administrative costs to be paid to the Owner.
- .6 The final acceptance of all Punchlist and incomplete work items is subject to the approval of the Architect and Owner.
- .7 Owner shall withhold an amount no less than stipulated in Section 9.2.2 until the Subcontractor satisfactorily completes all the required Punchlist items.

§ 9.11 AUDITS BY THE OWNER

§ 9.11.1 The Contractor agrees that the Owner or any of its duly authorized representatives shall, until the expiration of the record retention period (as described in Section 9.11.2), have access to and the right to examine where pertinent to verifying the Cost of the Work or other items reimbursed to Contractor under the Agreement on the basis of costs, books, documents, records, contracts, correspondence, instructions, receipts, vouchers, purchase orders, memoranda, papers, and all other records of the Contractor related to the Agreement for any reason.

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss. The Contractor shall repair any such damage, injury or loss at no cost to the Owner, except to the extent directly caused by agents or employees of the Owner. The Contractor shall adequately protect the Work and adjacent property as required by law, the Contract Documents, or as otherwise required, to cause no damage to the Work and adjacent property during the execution of the Work. This requirement shall also apply to structures above and below ground as conditions of the site require. The Contractor shall also provide recommendations and information to the Owner regarding: (i) the assignment of responsibilities for safety precautions and programs by the Subcontractors and the Owner for the safety of members of the Construction Team, the Owner, and the general public; (ii) temporary facilities; and (ii) equipment, materials and services for common use of Subcontractors. The Contractor shall verify that the requirements and assignment of responsibilities are included in the proposed Contract Documents. The Contractor shall at all times observe and comply with all Applicable Laws which may in any manner affect the equipment and materials used in the proposed construction, those employed on the work, and the conduct of the Work. The Contractor shall hold harmless and indemnify the Owner and its Board (in its individual and official capacities), employees and administrators, against any claim or liability arising from the violation of any Applicable Laws, whether the violations are by the Contractor or any Subcontractor, Sub-subcontractor or any other person employed or engaged by the Contractor or Subcontractor.

§ 10.1.2 The Contractor is solely responsible to the Owner for health and safety at the Project Site and, accordingly, shall be solely responsible for initiating, monitoring, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. The foregoing does not relieve the Subcontractors of their responsibility to the Contractor for the safe performance of their Work in accordance with all Applicable Laws.

§ 10.1.3 The Contractor shall develop and implement a health and safety plan that complies with all Applicable Laws covering all activities on the Project Site except those activities performed solely by the Owner. The Contractor shall provide the Owner a copy of such health and safety plan prior to commencement of Work. The Owner shall have no duty to review the plan and shall assume no duty by doing so. The plan shall be included in all bidding documents, and the requirements of the plan shall be applicable to all members of the Construction Team.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable 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 or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by Applicable Laws 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 erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project Site and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

- .1 The various parts of the structure and adjoining structures that cannot be maintained in their final positions with stability until other connecting or abutting parts or members are constructed and permanently secured shall be substantially braced and held in place. The Contractor shall protect the Project against all damage from the elements, overloading of the structure, and undermining or displacement due to conditions of the site or due to any other methods of construction.
- .2 The Work shall be executed in a manner which will cause as little inconvenience as possible to the Owner in the Owner's use of the property and existing facilities and structures. Where applicable the Contractor shall provide and maintain adequate, dust tight, protective coverings, enclosures and barricades about the Work and shall keep the same in repair throughout the entire Work. Enclosures of appropriate fire rated construction shall be installed by the Contractor where necessary to divide the Work area from the Owner's occupied areas.
- .3 During the prosecution of the Work, the Owner will use and occupy the buildings and site adjacent to and surrounding the Project Site. At all times during the construction period, safe and convenient access shall be maintained to and from these buildings and any other portions of the site occupied by the Owner and/or Subcontractors.

§ 10.2.4 No use or storage of explosives or other hazardous materials or unusual methods shall be allowed at the Project site without the Owner's express written consent. 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 store and use in compliance with all Applicable Laws. When in the course of the Work use or storage of explosives or other Hazardous Materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner reasonable advance notice.

- .1 No explosives will be permitted on the Owner's premises unless written permission is given by the Owner not less than seventy two (72) hours in advance of the time of delivery of such explosives. All risks, regardless of the Owner's approval, associated with the storage, handling and use of explosives are solely borne by the Contractor, as are any costs associated with damages, injuries or losses arising

- out of the use of such explosives.
- .2 The use of disposal or flammable liquids or other combustible materials shall be handled in accordance with established rules and regulations.

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

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

§ 10.2.7 The Contractor shall not permit any part of the structure or site to be loaded with a weight that will endanger the structural integrity of the structure or site or the safety of workmen or any other persons on or about the Work. When required law or for the safety of the Work, the Contractor shall shore up, brace, underpin, and protect foundations and other portion of existing structures that are in any way affected by the Work. Before commencement of any part of the Work, the Contractor shall serve any and all notices required to be given to adjoining land and/or property owners or other parties.

§ 10.2.8 The Contractor shall take all necessary precautions for the safety of employees and visitors on the site of the Project and shall comply with applicable provisions of Federal, State, and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public. The Contractor shall post danger signs warning against the hazards created by such features of construction such as protruding nails, hoists, holes, elevator hatchways, scaffolding, window openings, stairways, falling material and other such features.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall be responsible for securely fastening down all coverings and protecting the Work from injury by any cause.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages occur, the accident shall be reported immediately by telephone or messenger to the Owner. The obligations in this Section are in addition to the Contractor's reporting obligations under Applicable Laws.

§ 10.2.11 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

The Contractor shall take all necessary precautions for the safety of employees and visitors on the Project site and shall comply with Applicable Laws and provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the Project Site where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public. The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages occur, the accident shall be reported immediately by telephone or messenger to the Owner. The obligations in this Section are in addition to the Contractor's reporting obligations under Applicable Laws.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor shall not, nor shall it permit any member of the Construction Team to bring on, keep, store, generate, handle, use, release or dispose of any Hazardous or potentially Hazardous Material on, in or about the Project Site except permitted materials and as required by Section 10.3.8. The Contractor also shall not permit the inclusion of asbestos, polychlorinated biphenyls or urea formaldehyde in any construction materials.

§ 10.3.2 The Contractor shall be responsible for the removal and cleanup of all Hazardous Materials and wastes brought to the Project Site or generated at the Project Site by any member of the Construction Team at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise.

§ 10.3.3 The Contractor shall cause the presence, use, storage and/or disposal of Permitted Materials by any member of the Construction Team to be in strict (not substantial) compliance in every respect with all Applicable Laws and shall promptly notify the Owner if any amount of Permitted Materials or any other Hazardous Materials are released on the Project Site at any time in a quantity that would have to be reported or remediated under any Applicable Laws.

§ 10.3.4 The Contractor shall at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise, fully and promptly cause to be remediated, each and every release of Permitted Materials and any other Hazardous Materials in full compliance with all Applicable Laws, to the most stringent standards available under all Applicable Laws, and in cooperation with the Owner, except to the extent of contamination (i) that existed before Work began at the Project Site and neither the Contractor nor any other member of the Construction Team has exacerbated such pre-existing contamination after recognizing the presence and general location of such contamination, or (ii) was caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third party. Notwithstanding anything to the contrary herein, the Contractor shall nonetheless be responsible to cause to be remediated the hazardous condition if and to the extent, after recognizing the presence and general location of such condition that was pre-existing at the Site, or after it should have recognized such presence and general location, it exacerbates such contamination. If the contamination existed before Work began at the Project Site and it was not exacerbated by the Contractor or any member of the Construction Team (after it recognized or should have recognized the presence and general location of such contamination) or the contamination was caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third party, then all expenses associated with the remediation of the condition shall be borne by the Owner.

§ 10.3.5 The Contractor shall at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise, be solely responsible to the Indemnitees for and shall defend, indemnify and hold them harmless from and against all claims, damages costs, fines, judgments, injuries, and liabilities, including attorneys fees and costs, arising out of or in connection with the generation, release, transportation, storage, use, disposal or presence of permitted materials or Hazardous Materials at the Project Site by or due to any member of the Construction Team or for any noncompliance with Section 10.3 by any member of the Construction Team. The indemnity in this Section 10.3.5 does not include claims, fines, etc., to the extent they arise from (i) contamination that existed before Work began at the Project Site which was not exacerbated by the Contractor or any member of the Construction Team (after it recognized or should have recognized the presence and general location of such contamination) or (ii) contamination that was caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third party. This paragraph shall survive the expiration or earlier termination of the Contract.

§ 10.3.6 The Owner shall not be responsible for materials or substances the Contractor brings to the Site. The Owner shall be responsible for 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. The Contractor's responsibility under the foregoing indemnification shall include any and all governmentally mandated removal and/or clean-up of any such Permitted Materials or Hazardous Materials.

§ 10.3.7 If the Contractor shall receive any notice, whether oral or written, of any inquiry, test, investigation, enforcement proceeding, environmental audit or the like by or against the Contractor, any member of the Construction Team, or the Work with regard to any Hazardous Materials at or emanating from the Project Site, the Contractor shall immediately notify the Owner and Architect.

§ 10.3.8 If any member of the Construction Team encounters on the Project Site material, which it believes is a Hazardous Material in any form (other than Permitted Materials being used in an appropriate manner or asbestos, asbestos containing materials or polychlorinated biphenyl (PCBs) which have been rendered harmless), the Contractor shall (i) immediately stop Work in the area affected, (ii) report the condition to the Owner and Architect as expeditiously as possible, and (iii) clear all persons from the area of exposure. The Work in the affected area shall not be resumed until the Hazardous Material has been removed or rendered harmless as evidenced by written agreement of the Owner and the Contractor. The term "rendered harmless" shall be interpreted to mean that the levels are less than any applicable exposure standards set forth in OSHA regulations and all Applicable Laws. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project Site by any member of the Construction Team. Except for the Permitted Materials, no member of the Construction Team shall use any fill or other materials to be incorporated into the Work, which are Hazardous Material, toxic or comprised of any items that are Hazardous Material or toxic.

§ 10.3.9 NOT USED

§ 10.3.10 The Contractor shall not be required to cause performance without its consent of any Work relating to asbestos or PCB or other Hazardous Material, except as otherwise required under this Section 10.3. The Contractor agrees to excavate and stockpile on site soils with levels of contamination such that it can be safely and lawfully handled without special protective equipment if the Owner so requests. In such a circumstance, the Contractor shall comply with all Applicable Laws, shall be fully responsible for any non-compliance with all Applicable Laws, and shall indemnify, defend and hold harmless the Owner for any and all claims arising from the Contractor's failure to so comply with an Applicable Law.

§ 10.3.11 The Contractor shall take care to minimize the use of any Hazardous Materials to the extent consistent with the orderly conduct of the Work. To the maximum extent practical, the Contractor shall cause Permitted Materials which contain Hazardous Materials (and any explosive materials which are not Hazardous Materials) to be stored off the Project Site and off Owner's premises. Except for Permitted Materials, all Hazardous Materials used, stored or generated at the Project Site by the Construction Team shall be used, stored, transported and disposed of in strict (not substantial) conformity with Applicable Laws, codes, rules, regulations, guidelines and orders of governmental authorities having jurisdiction, and the Contractor shall maintain -- and provide promptly to Owner upon demand -- appropriate and complete documentation evidencing the Contractor's compliance with all such laws, codes, rules, regulations, guidelines and orders.

§ 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 SECURITY

§ 10.5.1 All members of the Construction Team shall cooperate with the Owner's security personnel and shall comply with all of the Owner's security requirements. Such requirements shall include, without limitation, if requested by the Owner, delivering to the Owner's security personnel, prior to the commencement of the Work on each day, a list of all personnel who will be permitted access to the Work. The foregoing, however, shall not relieve the Contractor of any obligation to provide a safe and secure workplace for all parties entering the Project Site.

- .1 The Contractor shall be responsible for providing Project site security to the extent necessary to safeguard the building, tools, materials, and completed Work. The Contractor's written plan for Project site security shall be submitted to the Owner for approval within twenty (20) days of the execution of the Agreement.
- .2 The entrances to the Project site will remain open during normal working hours for the use of all members of the Construction Team. Prior to and after normal working hours, all entrances and exits will be closed and secured by the Contractor. The Contractor shall provide to the Owner copies of keys (2 each) for all doors and gates secured.

§ 10.5.2 The Owner reserves the right to bar access to any individual for reasonable security reasons. Furthermore, the Owner reserves the right to limit the location of entries to the Work which may be used by members of the Construction Team.

§ 10.6 DUST; SMOKE; FUME

§ 10.6.1 The Contractor shall cause each member of the Construction Team to conduct operations in such a manner, which will control blowing dust. The amount of dust resulting from the operations of each of the Construction Team shall be controlled to prevent the spread of dust to adjacent public and private properties, to avoid creation of a nuisance in the surrounding area, and to avoid violation of any Applicable Law. Temporary methods consisting of sprinkling or similar methods will be permitted to control dust. Use of water will not be permitted when it will result in, or create, hazardous or objectionable conditions such as ice, flooding and pollution. Dust control shall be performed as the Work proceeds and whenever a dust or nuisance or hazard occurs.

§ 10.6.2 Smoke pipes, exhausts and fumes from boilers, engines, or other devices, shall in all cases be extended above roofs of buildings, or a substitute arrangement made subject to approval of the Architect and the Owner.

§ 10.6.3 The Contractor shall enforce the Architect's or the Owner's instructions regarding signs, advertisements, fires and smoking. No smoking will be permitted, except in designated areas.

§ 10.7 FIRE PRECAUTIONS

§ 10.7.1 All members of the Construction Team shall take all necessary precautions to guard against and eliminate all possible fire hazards and to prevent fire damage to any construction Work, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private. The members of the Construction Team shall comply with all conditions and requirements set forth herein, and shall immediately correct any hazardous conditions resulting from their operations when brought to their attention.

- .1 Materials and/or equipment stored in cardboard cartons, wood crates, or other combustible containers, shall be stored in an orderly manner and shall be readily accessible.
- .2 Before starting Work, the Contractor shall consult with the Owner and Architect regarding established rules and regulations relative to fire protection requirements and procedures governing any welding and cutting operations. The Contractor shall strictly (not substantially) conform and shall cause all members of the Construction Team to strictly (not substantially) conform with such rules and regulations in carrying out the Work. No such operations shall be carried out without proper safeguards for fire safety.
- .3 No open fires will be permitted. No tar or other melting kettles will be allowed within fifty (50) feet of any building.
- .4 All tarpaulins used during the course of the Work shall be of flameproof type and shall be secured in place against damage or flapping from wind.
- .5 All oil soaked rags, papers and other similar combustible material shall be removed from any building at the close of each day's Work, or more often if necessary, and placed in metal containers with self-closing lids.
- .6 Gasoline, benzene or like combustible material shall not be poured into sewers, manholes, or traps, but shall be disposed of, together with all flammable or waste material subject to spontaneous combustion, in a manner to avoid hazard or damage to persons or property.
- .7 All heating devices in connection with temporary heating facilities shall be of the least hazardous type, shall have all proper safety provisions and shall be installed at such locations and in such manner as will minimize the hazard. Oil fired stoves, gas fired heaters and heating units shall be of types approved by Underwriters Laboratories and shall have proper safety combustion controls. Oil fired heaters shall have integral fuel tanks not to exceed fifteen (15) gallons capacity for each unit. No more than one (1) day's supply of fuel shall be permitted to each heater which are inside of any building or facility.
- .8 Temporary heating facilities shall be inspected regularly to assure that they are in a safe and proper operating condition at all times. The Contractor shall provide continuously during operation properly trained personnel for said inspections.
- .9 Temporary structures of combustible construction shall not be placed inside of any structure. Such temporary structures shall be detached at a sufficiently safe distance from any building. Totally non-combustible temporary structures may, if necessary and feasible, be located inside of the structure.
- .10 Heaters and/or stoves installed in field offices or storage structures shall have fire resistant material underneath and at all sides, partitions and walls. Pipe sleeves shall be used where stove pipes run through walls or roof.

§ 10.7.2 The Contractor shall provide necessary personnel and fire fighting equipment to effectively control fires resulting from welding, flame cutting, or other operations involving the use of flame, sparks, or sparking devices.

During such operations, all highly combustible or flammable materials shall be removed from the immediate working area. If removal is impossible the same shall be protected with fire blankets or suitable non-combustible shields.

§ 10.7.3 Not more than one day's supply of flammable liquids or gases, such as oil, gasoline, solvent, propane, or roofing materials, shall be brought into any building at any one time. All flammable liquids having a flash point of 110 degrees F, or below, which must be brought into any building, shall be confined to Underwriters Laboratories labeled safety cans. The bulk supply of any flammable liquid shall be stored at a sufficiently safe distance from any building and from yard storage of building materials. Spigots on drums containing flammable liquids are prohibited on the Project site. Drums are to be equipped with approved vented pumps.

§ 10.7.4 Only a reasonable working supply of flammable building materials shall be located inside of or on the roof of any building.

§ 10.8 FIRE PROTECTION

§ 10.8.1 The Contractor shall maintain free access to the building areas for firefighting equipment and shall at no time block off main roadways or fire aisles without providing adequate auxiliary roadways and means of entrance for firefighting equipment, including heavy fire department trucks, where applicable.

§ 10.8.2 The Contractor shall at all times cooperate with the Owner and keep the municipal fire department informed of the means of entrance and changes to roadways or fire aisles as needed to provide fire department access to or around to Project site.

§ 10.8.3 The Contractor shall, during the entire construction period and until the completion of the Work, provide and maintain all material, equipment and services necessary for an adequate fire protection system, which shall meet the approval of the Owner and/or the Architect. The system shall, at a minimum, meet the requirements set forth in the Contract Documents and of Applicable Laws. These requirements shall be augmented and/or the installations relocated, as may be necessary to meet, at all times, the demands of adequate protection in all areas and shall not be reduced prior to the completion of the Work without the written approval of the Owner and/or the Architect.

§ 10.8.4 The Contractor shall maintain during construction an appropriate number of fire extinguishers to meet Factory Mutual (FM) requirements. Fire extinguishers shall be in good working order, conveniently located, clearly visible and readily accessible for proper protection of the Work.

§ 10.8.5 Fire extinguishers shall be an approved type, equivalent to 2-1/2 gallon water pressurized, suitable for the hazards to be encountered. In areas of flammable liquid, asphalt, or electrical hazards, fire extinguishers shall be equivalent to the carbon dioxide type or dry chemical type. During freezing weather, extinguishers shall be enclosed in heated cabinets or be of an antifreeze type.

§ 10.8.6 All other parties with temporary structures on the Project shall provide and maintain fire extinguishers in each of such structures.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located and have A.M. Best's Rating of "A" or better, such insurance as required by the Contractor under the Contract. Unless otherwise required by the Contract, said insurance shall protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by any member of the Construction Team or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;

- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18;
- .9 Liability insurance shall include all major divisions of coverage and e on a comprehensive basis including:
 - Premises' Operations (deleting X, C, or U exclusions);
 - Owner's and Contractor's Protective;
 - Products and Completion Operations;
 - Contractual – including specific for the Contractor's obligations under Paragraph 3.18;
 - Any auto; and
 - Broad Form Property Damage, including Completed Operations; and
- .10 All Bonds required by law, including bid bond, performance bond, and payment bond.

§ 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, shall be written on an occurrence basis, and shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The insurance policy's definition of "occurrence" must also include coverage for improper construction or faulty workmanship if the resulting damage occurs without the insured's expectation or foresight.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner and shall be endorsed to name the Owner as an additional insured. Contractor shall ensure that no insurance certificate shall include language that "failure to provide such notice shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor immediately.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (i) the Owner, the Owner's Representative Consultant (Program Manager), the Architect and the Architect'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 (ii) the Owner and Owner's Representative Consultant (Program Manager) as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 The entire amount of Contractor's liability insurance policy coverage limits, identified in the policy and on the Certificate of Insurance, must, under the policy, be available to pay damages for which the insured Contractor becomes liable, or for which the insured assumes liability under the indemnity provisions herein contained, and such coverage amount shall not be subject to reduction or set off by virtue of investigation or defense costs incurred by Contractor's insurer.

§ 11.1.6 The entire amount of the Contractor's liability insurance policy coverage limits shall be payable by the Contractor's insurer, with no deductible to be paid by, or self-insured retention to be attributed to, the Contractor unless this requirement is waived by the Owner. Contractor's insurance policy shall be primary to any policies carried by the Owner. Contractor is not permitted to be self-insured for the policies required by Section 11.1. Contractor's Certificate of Insurance must set forth the nature and amount of any such deductible or self-insured retention.

§ 11.1.7 If Contractor's liability insurance coverage is subject to any exclusions, reduction of policy limits or limitations not common to the type of coverage being provided, such exclusions or limitations shall be noted on the Certificate of Insurance.

§ 11.1.8 In the event that any of the policies of insurance or insurance coverage identified on the Contractor's Certificate of Insurance are canceled or modified, or in the event that Contractor incurs liability losses, either due to activities under this Contract, or due to other activities not under this Contract but covered by the same insurance, and such losses exhaust the aggregate limits of Contractor's liability insurance, then in that event the Owner may in its discretion either suspend Contractor's operations or activities under this Contract or terminate this Contract, and withhold payment for work performed on the Contract.

§ 11.1.9 The maintenance in full current force and effect of such form and amount of insurance as Owner shall have accepted, shall be a condition precedent to the Contractor's exercise or enforcement of any rights under the Contract.

§ 11.1.10 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Article 11, the Owner may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand. Upon purchase of such insurance, the Owner shall issue and the Contractor shall execute a Change Order reducing the Contract Sum or Guaranteed Maximum Price by the cost of the insurance. The Contractor shall furnish all necessary information to incept and maintain such Replacement Insurance.

§ 11.1.11 When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 11.1.12 Insurance coverage required under the Agreement shall be written with insurance carriers authorized to do business in the state where the Project is located. All insurance coverage procured by the Contractor shall be provided by insurance companies having policy holder ratings not lower than "A" and financial ratings not lower than "VII" as reported in Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect as of the date of renewal of any policies required by the Contract Documents. Except as set forth in Section 5.3.1.1, the minimum insurance requirements specified in this Agreement apply to each member of the Construction Team.

§ 11.1.13 The Contractor's liability and indemnification obligations to the Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with the Owner's requirements or by the Owner's acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by the Owner shall not be construed as accepting in any way deficiencies in the insurance.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 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 with deductibles as reasonably determined by Owner. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents. The Owner shall provide a copy of the builder's risk policy for review by the Contractor. If the Contractor believes additional coverage is necessary, the Contractor shall notify the Owner in writing within seven (7) days of receiving the policy. Providing that the Owner agrees, the Owner shall have an option to purchase or to reimburse the Contractor for acquiring the additional coverage. Owner is not obligated to reimburse the Contractor for acquiring additional coverage unless the Owner has agreed and authorized in writing for the Contractor to do so.

§ 11.3.1.1 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.

§ 11.3.1.2 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.

§ 11.3.1.3 Except as otherwise provided in the Contract Documents, if the property insurance requires deductibles, the Contractor shall be responsible to pay costs not covered because of such deductibles.

§ 11.3.1.4 If approved in writing by the Owner, this property insurance shall cover portions of the Work stored off the site.

§ 11.3.1.5 In the event of partial occupancy or use in accordance with Section 9.9 the Owner and the Contractor shall take reasonable steps to coordinate with and obtain consent of their respective insurance company or companies so that the Owner’s partial occupancy or use will not cause cancellation, lapse or reduction of insurance.

§ 11.3.1.6 Other than acts of the Owner or God (fire, lightning, hail, rainstorm, or other serious adverse weather event), each member of the Construction Team shall be responsible for the first Two Thousand Five Hundred Dollars (\$2,500) of any loss of or damage to property to the extent of any damage caused by its negligence or intentional acts. If more than one member of the Construction Team causes a loss or damage to property in the same occurrence, each member of the Construction Team shall pay a proportion of the Two Thousand Five Hundred Dollars (\$2,500), determined in the discretion of the Contractor and the Owner. *(The intent is that these two dollar amounts should match the Owner’s Builder’s Risk Insurance Deductible.)*

§ 11.3.1.7 Each member of the Construction Team shall be solely responsible for insuring against any loss or damage to all owned, borrowed or rented property, including but not limited to tools, materials, supplies, equipment, forms, scaffolding, towers, staging, bunkhouses and other temporary structures including their contents, which do not form a permanent part of the Project. The Owner shall in no event be liable for any loss or damage to any of the aforementioned items, or the Work connected with the Contractor or the Architect, or employees, agents or servants of same, which is not to be included in and remain a permanent part of the Project.

§ 11.3.1.8 The Owner’s property insurance policy excludes losses based on, among other things, errors in design, faulty workmanship, faulty materials, wear and tear, gradual deterioration, mysterious disappearance and fraudulent or dishonest acts. The property insurance policy also excludes losses due to settling, cracking, shrinking, bulging or expansion of pavements, foundations, walls, floors, and ceilings. The Contractor is liable and indemnifies the Owner from all losses.

§ 11.3.1.9 NOT USED

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner’s property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 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, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance unless the damages are caused in whole or in part by the Contractor or Contractor's negligence.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall provide the Contractor with a copy evidence of insurance coverages required by this Section 11.3. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty (30) days' prior written notice has been given to the Contractor.

§ 11.3.7 NOT USED

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds Contractor, Subcontractors, suppliers and anyone contracting directly or indirectly with them to the extent of any pending Application for Payment and Work properly performed and unpaid. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 (Intentionally Deleted)

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle with insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish separate Performance and Labor and Material Payment Bonds 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.

§ 11.4.1.1 Bonds shall be executed by a responsible surety licensed in the state where the Work is located with a Best's rating of no less than A, and financial ratings not lower than VII and shall remain in effect for a period not less than three (3) years following the later of (i) the date of Substantial Completion or (ii) the time required to resolve any items of incomplete Work and the payment of any disputed amounts.

§ 11.4.1.2 Bonds under this Section 11.4 must display the surety's bond number. A rider including substantially the following provisions shall be attached to each bond:

- .1** Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other Modification of the Contract Documents, the Subcontracts and the Subcontracts. Any addition, alteration, change, extension of time, or other Modification of the Contract Documents, the Subcontracts or the Subcontracts, or a forbearance on the part of either the Owner, the Contractor or one or more Subcontractors to one or more of the others, shall not release the Surety of its obligations and notice to the Surety of such matters is hereby waived.
- .2** Surety agrees that it is obligated under the bonds to any successor, grantee or assignee of the Owner or the Contractor.

§ 11.4.1.3 Each Subcontractor's surety, if any, shall also agree, in the form of a rider to each bond or via a separate agreement, that before it may seek exoneration, release, or any kind of relief from its obligations under the bond as a result of any default by the Owner or the Contractor in the performance of any obligations to the Subcontractor under the Subcontract, the surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner and the Contractor, and both of them shall have thirty (30) days from time after receipt of such notice within which to cure such default or cause it to be cured, or such additional reasonable period of time as may be

required if the nature of such default is such that it cannot be cured immediately. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to the Owner and the Contractor.

§ 11.4.1.4 Each Subcontractor's Performance Bond and the Labor and Material Payment Bond, if any, shall each be "dual obligee" type bonds naming both the Owner and the Contractor as obligees.

§ 11.4.1.5 Each Subcontractor shall cause the attorney-in-fact who executes the required bonds on behalf of its surety to affix thereto a certified and current copy of his or her power of attorney indicating the monetary limit of such power.

§ 11.4.1.6 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement or any Subcontract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.1.7 The Contractor shall keep the sureties informed of the progress of the Work, and, without limiting the requirements of Section 11.5.1.2(1) above, where necessary, obtain the sureties' consent to, or waiver of: (i) notice of changes in the Work; (ii) request for reduction or release of retainage; (iii) request for Final Payment; and (iv) any other material required by the surety. The Owner shall be notified by the Contractor, in writing, of all communications with the surety requesting or pertaining to consents or waivers. The Owner may, in the Owner's sole discretion, inform sureties of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits pursuant to any bond issued in connection with the Work.

§ 11.4.1.8 The Contractor may, in its discretion, determine other members of the Construction Team who will be required to supply bonds. All such bonds shall be (i) purchased solely at the expense of the Contractor (or the persons supplying them), without reimbursement under the Contract Sum or Guaranteed Maximum Price or otherwise, and (ii) dual obligee bonds, naming the Owner as one of the obligees.

§ 11.4.2 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.

§ 11.5 PROJECT MANAGEMENT PROTECTIVE LIABILITY "WRAP-UP" INSURANCE

§ 11.5.1 NOT USED

§ 11.5.2 NOT USED

§ 11.5.3 NOT USED

§ 11.6 INSURANCE IN GENERAL

§ 11.6.1 Insurance coverage required under the Agreement shall be written with insurance carriers authorized to do business in the state where the Project is located. Insurance coverage shall be in a form and provided by an insurer acceptable to the Owner with an A.M. Best's Rating of A, VII or better and shall name the applicable member of the Construction Team as a "named insured", as opposed to an "additional insured".

§ 11.6.2 At the written request of the Owner to the Contractor, the Contractor shall provide to the Owner a copy of any insurance policy required herein within five (5) calendar days of such written request (or a binder if a policy is not yet available). If the Contractor fails to submit a copy of any insurance policy within five (5) calendar days of such written request or if the insurance is in form or insurer unacceptable to the Owner, Owner shall have the right, but not the obligation, to purchase insurance ("Replacement Insurance") in the name of the applicable member of the Construction Team. Upon purchase of Replacement Insurance the Owner shall issue and the Contractor shall execute a Change Order reducing the Contract Sum or Guaranteed Maximum Price by the cost of the Replacement Insurance. The Contractor shall furnish all necessary information to inception and maintain such Replacement Insurance.

§ 11.6.3 The Contractor's liability and indemnification obligations to the Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with the Owner's requirements or by the Owner's acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by the Owner shall not be construed as accepting in any way deficiencies in the insurance.

§ 11.6.4 Except as set forth in Section 5.3.1.1, the minimum insurance requirements specified in this Agreement apply to each member of the Construction Team.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request, with the Owner's written consent, to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

If, within the stipulated warranty period in Section 5.3.2.11, and after the date of (i) Substantial Completion and acceptance of the Work or any designated portion thereof or (ii) the completion of Work not finished at Substantial Completion, or within the terms of an applicable special warranty required by the Contract Documents (the "Correction Period"), any of the Work is found by the Owner to be Defective, the Contractor shall, without interfering materially with the Owner's facilities, personnel or operations, promptly cause it to be corrected, unless the Owner has previously specifically accepted such defect in writing. The Contractor shall bear all costs of correcting rejected Work, without increase in the Guaranteed Maximum Price, and without use of any contingency, including any additional testing and inspections made necessary thereby. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement.

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Owner and/or the Architect may reject defective or unsatisfactory Work. The Contractor shall promptly cause all Work rejected by the Owner and/or Architect, whenever observed prior to Final Completion, to be corrected without extension of the Construction Time or increase in the Contract Sum or Guaranteed Maximum Price and without use of any contingency. If any additional testing, inspections and compensation for the Architect's services and expenses are incurred because of corrective Work, the Contractor shall pay them promptly upon demand.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within the stipulated warranty period in Section 5.3.2.11 and 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 an 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, without interfering materially with the Owner's facilities, personnel and operations, correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Contractor shall bear all costs of correcting rejected Work, without increase in the Guaranteed Maximum Price, and without use of any contingency, including any additional testing and inspections made necessary thereby. The Owner shall give such notice promptly after discovery of the condition. During the period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement.

§ 12.2.2.2 Upon completion of any Work under or pursuant to Section 12.2.2 the stipulated warranty period in Section 5.3.2.11 shall begin anew with respect to the Work requiring correction.

§ 12.2.2.3 (Intentionally Deleted)

§ 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, whether completed or partially completed, of the Owner or separate contractors 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 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 Unless the Owner authorizes otherwise, Substantial Completion shall not commence the Correction Period for any equipment or systems that:

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents or otherwise defective, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum or Guaranteed Maximum Price will be reduced by an equitable amount which reflects the loss of value to the Owner caused by the Defective Work. Such adjustment shall be effected whether or not final payment has been made, and if it occurs after Final Payment is made, the Contractor shall immediately pay the Owner whatever sum is owed.

§ 12.4 OWNER'S RIGHT TO CORRECT OR REMOVE DEFECTIVE WORK

§ 12.4.1 If the Contractor fails to cause Defective Work to be corrected within a reasonable time after receipt of notice from the Owner, the Owner may correct it and the Contractor shall pay the Owner all costs of correction (including the value of the Owner's staff time) upon demand. Alternatively, in the event of such failure, the Owner may (without being deemed a bailee) remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting from the sale proceeds all costs, expenses and damages that should have been borne by the Contractor (including the value of the Owner's staff time and reasonable attorneys' fees). If the proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum or Guaranteed Maximum Price shall be reduced by the deficiency, plus interest. If payments then or thereafter due the Contractor are not sufficient to cover the amount owed, the Contractor shall pay the difference to the Owner immediately upon demand.

§ 12.4.2 The Owner's right to store and sell such Defective Work shall not give rise to a duty to do so. Instead, the Owner may upon ten (10) day's prior written notice simply dispose of such Defective Work as it sees fit. All costs of disposal shall be borne by the Contractor, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise.

§ 12.4.3 Periods of Limitation. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations, which the Contractor might have under the Contract Documents or Applicable Laws. Establishment of the Correction Period relates only to the specific obligation of the Contractor to correct the Work under this Article 12 and has no relationship to the time within which the obligation to comply with the Agreement may be sought to be enforced by the Owner, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations under the Agreement.

§ 12.4.4 The Owner's Right to Stop the Work. If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents as required by Section 12.2.2 or fails to carry out the Work in accordance

with the Contract Documents, the Owner may, by written order, direct 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.

§12.5 DAMAGE

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

§ 12.5.2 The Contractor shall bear the cost of correcting destroyed or damaged construction or other property, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.5.3 Nothing in this Section 12.5 either limits the parties' rights to obtain recovery from any applicable property insurance or entitles the insurer to pursue a subrogation claim.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 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 such 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 third party. The Contractor shall execute all consents reasonably required to facilitate such assignment.

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

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 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.

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by Applicable Laws. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (i) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (ii) tests, inspections or approvals where building codes or Applicable Laws prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense without increase in the Contract Sum or Guaranteed Maximum Price, and without use of any contingency.

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

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the prime interest rate as published in the Wall Street Journal on the first day of the month when owed payment become delinquent; however, shall not exceed six percent (6%) per annum.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, in accordance with Michigan law, regardless of time frames identified herein,, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by Applicable Laws, but in any case not more than ten (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 13.7.

§ 13.7.1 Regardless of any provisions to the contrary, the statute of limitations with respect to any defective or nonconforming Work which is not discovered by the Owner shall not commence until the discovery of such defective or nonconforming Work by the Owner.

§ 13.8 SUBMISSION TO PROCEEDINGS

§ 13.8.1 If the Owner is a party to any litigation or arbitration with respect to the Project involving a common question of law or fact (whether as plaintiff, defendant or third party defendant), the Contractor consents to being joined in such action and to the jurisdiction of the court in which the action is instituted (if the Contractor is named as a defendant or impleaded as a third-party defendant) and to service of process by that court; and the Contractor waives any right to contest its joinder in such action on the grounds of improper jurisdiction or venue.

§ 13.9 NO PERSONAL LIABILITY

§ 13.9.1 In carrying out any of the provisions of the Agreement, or in exercising any power or authority granted to them by or within the scope of the Agreement, there shall be no personal liability upon, and Architect, Contractor and Subcontractor waive any claim against, the members of the Owner's Board of Education or any of its Board Members, in their official and individual capacities, its administrators, employees, agents, or Owner's Representative Consultant, either personally or as public officials, it being understood that in all such matters they act solely as agents and representatives of the Owner.

§ 13.10 INTEGRATION

§ 13.10.1 The Contract Documents shall, if possible, be construed to render each of their provisions valid and enforceable. However, if any part, term or provision of the Contract Documents is held by the final judgment of any court of competent jurisdiction to be illegal, invalid or unenforceable, the validity of the remaining portions or provisions shall not be impaired or affected, and the rights and obligations of the parties shall be construed as having been written to include terms that are the maximum protection enforceable under law, and shall be enforced as if the Contract Documents did not contain the particular part, term or provision held to be illegal, invalid or unenforceable.

§ 13.11 THIRD-PARTY BENEFICIARIES

§ 13.11.1 Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Contractor. There are no third-party beneficiaries to the Agreement. However, it is understood and agreed that the Owner is and shall be designated an intended third-party beneficiary of all contracts for design or engineering services, Subcontracts, sub-subcontracts, and other agreements between Contractor and third parties pertaining to the Work.

§ 13.12 NON-DISCRIMINATION EMPLOYMENT PROVISION

§ 13.12.1 During the performance of the Work, the Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their sex, race, creed, color, religion, age, height, weight, marital status, national origin, ancestry, sexual orientation, disability, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

§ 13.12.2 The Contractor will, in all solicitations, or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to sex, race, creed, color, religion, age, height, weight, marital status, national origin, ancestry, sexual orientation, disability, or veteran status.

§ 13.12.3 The Contractor will furnish all information and reports required by Applicable Laws, and by the rules, regulations and orders of any government agency or authority having jurisdiction. The Contractor shall permit access to the Contractor's books, records, and accounts by the administrative agency and the Secretary of Labor for the purposes of investigation to ascertain compliance with such rules, regulations and orders.

§ 13.12.4 In the event of the Contractor's noncompliance with the non-discrimination clauses of the Contract Documents, or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for future Owner contracts in accordance with procedures authorized in Applicable Laws, or by rule, regulation or order of any government agency or authority having jurisdiction.

§ 13.12.5 The Contractor will include the provisions of Sections 13.12.1 through 13.12.4 of this Article in every Subcontract or purchase order unless exempted by rules, regulations, or other orders of the President's Committee on Equal Employment Opportunity issued pursuant to Applicable Laws, so that such provisions will be binding upon each Subcontractor. The Contractor will take such action with regards to any Subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a Subcontractor as a result of such direction by the administering agency, the Contractor may request the United States of America to enter into such litigation to protect the interests of the United States of America.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor shall have the right to and may terminate the Contract only upon the occurrence of one of the following reasons:

- .1** the Work is stopped for a period of one hundred twenty (120) consecutive days through no act or fault of the Contractor or any member of the Construction Team, due to an issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped, or an act of government, such as a declaration of national emergency making material unavailable;
- .2** Upon no less than seven (7) days' written notice of intent to suspend or terminate, Contractor may suspend Work or terminate the Agreement for the Owner's nonpayment of Contract amounts due in accordance with this Agreement where (i) the Owner has failed to make payment within thirty (30) days after receiving written notice of such nonpayment from Contractor; (ii) the Owner has failed to timely object to the unpaid portion of a properly submitted payment request by the Contractor setting forth the reasons for its objection; and (iii) the Owner has also failed to pay the Contractor undisputed amounts properly submitted and approved for payment. Otherwise, in the event of a dispute as to payment or otherwise, the Contractor shall be obligated to continue its performance and shall have the right, but not the obligation, to immediately submit the dispute to arbitration pursuant to the Rules of the American Arbitration Association.
- .3** In the event Contractor believes Owner is in material breach of this Agreement for reasons other than nonpayment, the Contractor, if the material breach shall continue for thirty (30) days after written notice thereof shall have been given by the Contractor to Owner, may suspend work or terminate this Agreement where (i) the Owner has failed to remedy or take reasonable measures to remedy the breach after receiving written notice of such breach from the Contractor; (ii) the Owner has failed to timely object to the Contractor's allegations of material breach setting forth the reasons for its objections; and (iii) the breach is ongoing. Otherwise, in the event the breach is disputed, the Contractor shall be obligated to continue its performance.
- .4** Repeated suspensions by the Owner, other than such suspensions as are agreed to by the Contractor, which constitute in the aggregate more than one hundred eighty (180) days.

§ 14.1.2 Upon the occurrence of one of the events listed in Section 14.1.1, the Contractor may, upon ten (10) days' additional written notice to the Owner, and provided that the condition giving rise to the Contractor's right to terminate is continuing, terminate the Agreement.

§ 14.1.3 Upon termination by the Contractor, the Owner will pay to the Contractor the sum determined by Section 14.4.3. Such payment will be the sole and exclusive remedy to which the Contractor is entitled in the event of termination of the Agreement by the Contractor pursuant to Section 14.1; and the Contractor will be entitled to no other compensation or damages whatsoever as a result of the termination of the Agreement and expressly waives any right to claim them.

§ 14.1.4 (Intentionally Deleted)

§ 14.1.4 The Contractor acknowledges that it has certified to the Owner that no owner, employee, agent, representative, contractor, Subcontractor, Sub-subcontractors and/or other personnel of the Contractor will be on any School District premises if they are a registered criminal sexual offender under the Sex Offenders Registration Act, Public Act 295 of 1994, or have been convicted of "Listed Offense" as defined under Section 722 of the Sex Offenders Registration Act, MCL 28.722 (the "Certification"). The Contractor acknowledges and agrees that if it is found to have submitted a false Certification or otherwise breaches or fails to comply with the requirements of the Certification, the Owner may immediately terminate the Contract and notwithstanding any other provision of this Contract, the Contractor shall be liable to the Owner for any and all costs and expenses incurred by the Owner to secure a replacement contractor to complete the Work in accordance with the Contract Documents, including, but not limited to, any costs or expenses required to be paid by the Owner to the replacement contractor in addition to those required to be paid to the Contractor, all attorney and/or professional service fees, and any and all other actual and consequential damages incurred by the Owner.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Agreement may be terminated by Owner for cause without prejudice to any right or remedy available to Owner under the Contract Documents or at law or in equity after giving the Contractor and the surety, if any, seven

(7) days' written notice provided that Contractor fails to take appropriate steps within such seven-day period to cure or if the default is of a nature that it cannot be cured immediately, commence, within 7 days, a cure of the cause for termination and diligently pursue it to completion, provided however that additional time to cure shall not exceed an additional 30 days. Reasons for termination for cause may include:

- .1 the Contractor institutes proceedings or consents to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable Federal or State law ;
- .2 a petition under any Federal or State bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing;
- .3 the Contractor admits in writing its inability to pay its debts generally as they become due;
- .4 the Contractor makes a general assignment for the benefit of its creditors;
- .5 a receiver, liquidator, trustee or assignee is appointed because of the Contractor's bankruptcy or insolvency;
- .6 a receiver is appointed for all or any substantial portion of the Contractor's properties;
- .7 the Contractor abandons the Work;
- .8 the Contractor fails to promptly and diligently perform the Services, or the Work is not prosecuted diligently in accordance with the requirements of the Contract Documents, or enough properly skilled workers or proper materials are not supplied for the Work;
- .9 the Contractor submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is untrue in any material respect;
- .10 the Contractor fails to make prompt payment of amounts properly owing to Subcontractors, or otherwise breaches its obligations under any Subcontract or the Agreement;
- .11 a Lien is claimed against any part of the Work or the Project Site by a member of the Construction Team, other than by reason of Owner's failure to pay Contractor amounts to which it is entitled under the Agreement, and not promptly bonded or insured over by the Contractor;
- .12 the Contractor disregards or violates any Applicable Laws;
- .13 any representation made by the Contractor in the Agreement proves untrue, or the Contractor otherwise violates any provision of the Agreement;
- .14 the Contractor persistently fails to comply with the requirements of the Contract Documents; or
- .15 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When the Owner terminates the Contract for one of the reasons stated in 14.2.1, 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 (7) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until final completion of the Work and determination of the sums due pursuant to Section 14.2.5 below.

§ 14.2.4 If requested by the Owner following a termination for cause, the Contractor shall remove any part or all of its equipment, machinery and supplies from the Project Site within seven (7) days from the date of such request, and in the event of the Contractor's failure to do so, Owner shall have the right to remove or store such equipment, machinery and supplies at the Contractor's expense.

§ 14.2.5 If the unpaid balance of the Contract Sum or Guaranteed Maximum Price exceeds all costs to the Owner of completing the Work, including increased costs resulting from Contractor's default for the Owner's staff time, then the Contractor shall be paid for all Work performed by the Contractor to the date of termination, but in no case shall the amount paid to the Contractor cause the Contract Sum or Guaranteed Maximum Price to be exceeded. If the costs to the Owner of completing the Work exceed such unpaid balance, the Contractor shall pay the difference, plus interest, to the Owner within thirty (30) days after the Owner's demand. The costs to the Owner of completing the Work shall include (but only to the extent caused or exacerbated by the Contractor's default) the cost of any additional

architectural, legal, managerial, and administrative services required, any costs incurred in retaining another Contractor or other Subcontractors, any additional interest or fees which Owner incurs or must pay by reason of a delay in completion of the Work, attorneys' fees and expenses, and any other damages, costs, and expenses Owner may incur by reason of completing the Work.

§ 14.2.6 If the Agreement is terminated by Owner, Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of Owner, for any equipment owned by the Contractor which Owner elects to retain and which is not otherwise included in the Contract Sum or Guaranteed Maximum Price. To the extent that Owner elects to take legal assignment of Subcontracts (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in Section 14.2.5, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts, as Owner may require for the purpose of fully vesting in Owner the rights and benefits of the Contractor under such Subcontracts.

§ 14.2.7 If the Owner erroneously or improperly terminates the Contractor for cause, then the Owner's action shall be deemed to be a termination for convenience, subject to the provisions of Section 14.4.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, for any reason, order the Contractor in writing to suspend, postpone, delay or interrupt the Work in whole or in part for such period of time as Owner may determine (a "Suspension"). In the event of any Suspension, the Owner shall have the right, in its discretion, upon written notice to the Contractor, to keep the Agreement in effect during the period of such Suspension; provided, however, that if the Suspension equals a period of seven (7) days, the Contractor shall be reimbursed for the actual out-of-pocket costs incurred by the Contractor or its Subcontractors directly as a result of such Suspension (such as reasonable demobilization and remobilization costs), and an appropriate extension of the Construction Time shall also be granted. If the Work is suspended for a period of more than ninety (90) days, the Contractor may terminate the Agreement in accordance with Section 14.1

§ 14.3.2 The Contract Sum and Construction Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. 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 for any particular cost item is made or denied under another provision of the Contract.

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

§ 14.3.4 Except as specifically set forth above, no Suspension shall give rise to any cause of action or claim against the Owner for damages, loss of profits, expenses or other remuneration of any kind.

§ 14.3.5 Notwithstanding any other provisions of the Agreement, if, such Suspension arose on account of the Contractor's failure to fulfill the Contractor's obligations under the Agreement or on account of any other fault of any member of the Construction Team, the Owner may withhold payment of so much of any monies which otherwise may be payable to the Contractor under the Contract Documents as will be sufficient to pay for the costs or damage that the Owner will suffer, and the Contractor shall not be entitled to any recovery on account of the Suspension. Such monies may be applied toward any damages or expenses sustained by the Owner as a result of such failure including, without limitation, any excess costs incurred by the Owner in completing the Work by the use or employment of other licensed professionals or otherwise. The Contractor shall remain liable to the Owner for all such damages and expenses in excess of any such monies being withheld by the Owner. The failure of the Owner to withhold monies from the Contractor shall not be construed as an acknowledgment by the Owner that no such damages or expenses exist and shall not prevent the Owner from thereafter making any claim against the Contractor therefor.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause. Termination by the Owner under this Section shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Section:

- .1 cease operations as directed by the Owner in the notice and deliver to the Owner the originals or legible copies of all Drawings, Specifications, reports and other data, records and materials in the Construction's Manager's custody and control pertaining to the portion of the Work for which the employment of the Contractor was terminated;
- .2 enter into no additional Subcontracts, except as necessary to complete continuing portions of the Contract;
- .3 terminate, on the most favorable terms possible, all Subcontracts to the extent they relate to the Work terminated ;
- .4 complete the performance of Work not terminated; and
- .5 take actions that may be necessary or that the Owner may direct, for the protection and preservation of the terminated Work and of materials, plant and equipment in transit or stored.

§ 14.4.3 Upon such termination, the Owner shall pay, and the Contractor, as its sole remedy, may recover payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination, for items theretofore properly and timely fabricated off the Project Site, delivered and stored in accordance with the Owner's instructions, and for any actual out-of-pocket costs it incurs in complying with Section 14.4.2, such as reasonable demobilization costs. The Contractor hereby waives all other claims whatsoever against Owner based on the termination.

§ 14.4.4 In any recovery by the Contractor, the Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims which the Owner has against the Contractor under the Agreement and (iii) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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.

§ 15.1.1.1 Changes in Law. If changes in ordinances, laws, requirements, or regulations or changes (which could not reasonably have been anticipated prior to the execution of the Contract) in judicial or agency interpretations of such ordinances, laws, requirements or regulations occur after execution which require an alteration of the Work or otherwise may result in a price or time impact, Contractor shall so notify Owner in writing consistent with Section 15.1.4 and comply with the procedures set out therein. Changes in the following areas of law are deemed to be within the scope of the Work hereunder and shall not be the basis for any change in price or time: requirements affecting the use or handling by Contractor of toxic or hazardous materials, Occupational Safety and Health Act requirements relating to Contractor's prosecution or conduct of the Work during the Project, or laws or requirements relating to operation of the business of construction contracting, engineering, or equipment manufacturing, or taxes affecting any such business.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party with a copy sent to the Architect. Claims by either party must 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 except as provided in Sections 7.5.1, 8.3.2 and 8.4.2.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum or GMP, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Construction Time, written notice shall be given pursuant to Section 8.3.2. 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.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be made and governed by the provisions of Section 8.3.2 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.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, 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 litigation or any other mutually agreed upon dispute resolution forum of any Claim arising prior to the date final payment is due, unless thirty (30) days have passed after the Claim has been referred to the Initial Decision Maker with no 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: (i) request additional supporting data from the claimant or a response with supporting data from the other party, (ii) reject the Claim in whole or in part, (iii) approve the Claim, (iv) suggest a compromise, or (v) 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 such request, and shall either (i) provide a response on the requested supporting data, (ii) advise the Initial Decision Maker when the response or supporting data will be furnished or (iii) 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 (i) be in writing; (ii) state the reasons therefor; and (iii) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Construction Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

§ 15.2.6.1 Either party may, within thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation within sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, 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 Laws to comply with the lien notice or filing deadlines.

§ 15.3 ALTERNATE DISPUTE RESOLUTION

§ 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 15.1.6 shall be subject to non-binding Alternative Dispute Resolution as a condition precedent to binding dispute resolution. On those occasions when a dispute arises between the parties to this Agreement, the parties shall be compelled to seek an alternative means of resolving the dispute as a condition precedent to litigation. Therefore, the parties agree to the following terms and conditions:

The party bringing a claim shall give notice to the other party and, in writing, propose a meeting within seven (7) days after the claim arises in which to discuss and attempt to resolve the claim.

In the event the meeting between the parties to resolve the claim does not resolve the dispute or does not take place within said seven (7) day period, the parties shall designate, by mutual agreement, an independent mediator who shall convene a meeting of the parties within a period of fourteen (14) days of the later of the initial meeting between the parties or the date notice was given pursuant to the Paragraph above. The mediator shall render his/her decision within seven (7) days of said meeting.

The purpose of the mediation is to attempt to resolve the dispute between the parties. The mediator shall not be empowered with the authority to render a binding opinion or award.

In the event the independent mediator's attempt to resolve the dispute between the parties fails, then each party will be free to pursue recovery of claims at law.

During the pendency of this alternative dispute resolution process, the parties agree that the statute(s) of limitations applicable to all claims that are the subject of this process shall be tolled.

§ 15.4 ARBITRATION

§ 15.4.1 NOT USED

§ 15.4.1.1 NOT USED

§ 15.4.2 NOT USED

§ 15.4.3 NOT USED

§ 15.4.4 NOT USED

§ 15.4.4.1 NOT USED

§ 15.4.4.2 NOT USED

§ 15.4.4.3 NOT USED

[end of AIA Document A201-2007]

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**GROSSE POINTE PUBLIC SCHOOL SYSTEM
NOVEMBER 2018 BOND PROGRAM
REQUEST FOR PROPOSAL (RFP) – CONSTRUCTION MANAGEMENT SERVICES
ATTACHMENT D.1 – DETAILED PROPOSAL FORM
DECEMBER 20, 2018**

_____ (Name of Construction Management Firm) Proposes to provide Pre-Construction and Construction Services to Grosse Pointe Public School System (hereafter referred to as Owner) for the 2018 Bond Program ("Project") as follows:

ACKNOWLEDGEMENT OF ADDENDA TO RFP

The Firm acknowledges receipt of the following addenda:

Addendum Number _____ dated _____

Addendum Number _____ dated _____

Addendum Number _____ dated _____

A. For Scope of Services as described and required in the Request for Proposal and AIA A133 - 2009 as modified:

Two (2) High Schools

- A. For Pre-Construction Services for all projects, on an hourly basis, and not to exceed \$_____.
- B. For Construction Services, at a Cost plus a Fee with a GMP basis:
 - a. Not-to-Exceed for Personnel Cost is: \$_____.
 - b. Not-to-Exceed for Construction Support Services is: \$_____.
 - c. Construction Manager's Overhead & Profit (Fee) is: _____% of the Cost of the Work
(Approximately \$26.6M)

Nine (9) Elementary Schools, Three (3) Middle Schools, (2) Two Support Buildings

- 1. For Pre-Construction Services for all projects, on an hourly basis, and not to exceed \$_____.
- 2. For Construction Services, at a Cost plus a Fee with a GMP basis:
 - a. Not-to-Exceed for Personnel Cost is: \$_____.
 - b. Not-to-Exceed for Construction Support Services is: \$_____.
 - c. Construction Manager's Overhead & Profit (Fee) is: _____% of the Cost of the Work
(Approximately \$42.4M)

B. Reimbursables

Provide a list of items for which you would require reimbursement and the percentage mark-up, if any, which you would add to reimbursable expenses. In addition, please provide a not-to-exceed allowance for reimbursable expenses on this project. Please refer to AIA B101-2017 as amended, Article 11 for clarifications on allowable reimbursable expenses.

**GROSSE POINTE PUBLIC SCHOOL SYSTEM
NOVEMBER 2018 BOND PROGRAM
REQUEST FOR PROPOSAL (RFP) – CONSTRUCTION MANAGEMENT SERVICES
ATTACHMENT D.1 – DETAILED PROPOSAL FORM
DECEMBER 20, 2018**

Not-to-exceed Reimbursable Allowance \$

Percentage Mark-up, if any %

- C. All Proposals submitted may not be withdrawn and shall be irrevocable for a minimum period as defined in this RFP.
- D. List any actions taken by a regulatory agency against or litigation involving the firm or its agents or employees with respect to any work performed in the last five (5) years (use separate sheet, if necessary).
- E. If selected as Construction Management Firm, we agree to the contractual terms as provided in the RFP as noted below:

- ☐ AIA A133 - 2009 Edition, as modified
- ☐ AIA A201 - 2007 General Conditions, as modified
- ☐ Exceptions to amended A133 - 2009 and A201 -2007*

*Attach any and all SPECIFIC proposed alternate contract language

Any exceptions to the terms and conditions contained in this RFP or the form of Contract attached to this RFP, or any other special considerations or conditions requested or required by the Firm MUST be specifically enumerated by the Firm and be submitted as part of its Proposal, together with an explanation as to the reason such terms and conditions of the RFP or form of Contract cannot be met by, or, in the Firm's opinion, are not applicable to, the Firm. The Firm shall be required and expected to meet the specifications and requirements as set forth in this RFP and the form of Contract in their entirety, except to the extent exceptions or special considerations or conditions are expressly set forth in the Firm's Proposal and those exceptions or special considerations or conditions are expressly accepted by the School District. All Pricing factors must be clearly indicated in the manner required on the Proposal Forms provided as part of this RFP.

I have read and I understand the responsibilities required of the Firm under the terms of this Request for Proposal and the proposed Contract. If selected, our Firm will be able to fulfill the requirements.

The undersigned understands that GPPSS reserves the right to accept or reject, in whole or in part, any and all Proposals, to waive informalities and irregularities therein, and to award the Contract to other than the Firm submitting the best financial Proposal (low proposed Firm) and to award the Contract to one (1) or more Firms in GPPSS's sole and absolute discretion.

If award is made to our Firm based upon our Proposal, we agree to enter into the attached form of Contract with GPPSS to furnish the services in strict accordance with this Request for Proposal, the Contract and our Proposal.

**GROSSE POINTE PUBLIC SCHOOL SYSTEM
NOVEMBER 2018 BOND PROGRAM
REQUEST FOR PROPOSAL (RFP) – CONSTRUCTION MANAGEMENT SERVICES
ATTACHMENT D.1 – DETAILED PROPOSAL FORM
DECEMBER 20, 2018**

All Firms are placed on notice that the scope of the 2018 Bond Program Projects may be revised, expanded or reduced by the School District, as allowed by law, based on market conditions, received bids, value engineering, schedule changes, and other similar variables. Notwithstanding the above, the total budget for construction is not anticipated to change. All Firms making a Proposal acknowledge that they have taken this into consideration when submitting its Proposal and your fees must accommodate changes in construction without change orders for Additional Services.

My signature certifies that the Proposal as submitted complies with all terms and conditions as set forth in this Request for Proposal and the Contract, unless specifically enumerated as an exception as part of our Proposal.

I hereby certify that I am authorized to sign as a Representative for the Firm.

FIRM HEREBY SUBMITS THIS PROPOSAL PRICING FORM IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE RFP.

SIGNATURE

Dated this _____ day of _____, 20_____.

Company Name: _____

By: _____
Signature

Title: _____

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

Subscribed and sworn before me this _____ day of _____, 20_____.

Notary Public: _____

My Commission Expires: _____

**GROSSE POINTE PUBLIC SCHOOL SYSTEM
NOVEMBER 2018 BOND PROGRAM
REQUEST FOR PROPOSAL (RFP) – CONSTRUCTION MANAGEMENT SERVICES
ATTACHMENT D.1 – DETAILED PROPOSAL FORM
DECEMBER 20, 2018**

PROPOSAL CHECKLIST

- | | |
|---|---|
| <input type="checkbox"/> Cost Proposal | <input type="checkbox"/> IF selected as Construction Manager, I agree to the contractual terms as provided in the RFP and the Contract: |
| <input type="checkbox"/> Detailed Proposal Form | |
| <input type="checkbox"/> Cost Workbook | |
| <input type="checkbox"/> Firm Experience Form | <input type="checkbox"/> AIA A133 CMc, as modified |
| <input type="checkbox"/> Team Experience Form | <input type="checkbox"/> AIA A201 General Conditions, as Amended |
| <input type="checkbox"/> CM Request for Qualifications | <input type="checkbox"/> Preliminary Project Milestones |
| <input type="checkbox"/> Iran Disclosure Statement | |
| <input type="checkbox"/> Familial Disclosure Statement | |
| <input type="checkbox"/> Criminal Background Statement | Addendum # ____ dated _____ |
| <input type="checkbox"/> An Electronic Copy | Addendum # ____ dated _____ |
| <input type="checkbox"/> Clarifications/Exceptions/Additional Info. | Addendum # ____ dated _____ |

GROSSE POINTE PUBLIC SCHOOL SYSTEM
 NOVEMBER 2018 BOND PROGRAM
 REQUEST FOR PROPOSAL (RFP) – CONSTRUCTION MANAGEMENT SERVICES
 ATTACHMENT D.2 – COST WORKBOOK (STAFF ALLOCATION MATRIX)
 DECEMBER 20, 2018

PROJECT NUMBER: Proposal Due Date = 24-Jan-19
 PROJECT NAME: (2) High Schools, (3) Middle Schools, (9) Elementary Schools, (2) Support Buildings

ESTIMATED CONSTRUCTION COST: \$ 69,000,000
 CONSTRUCTION DELIVERY METHOD: CM *Construction Manager as Constructor, with GMP*

	<u>Preconstruction</u>	<u>Construction</u>
START DATE:	3/1/2019	4/1/2019
FINISH DATE:	3/30/2023	12/31/2023
	<u>Months</u>	<u>Weeks</u>
PROJECT DURATION:		<u>Days</u>
	Pre-constr	50
	Construction	58
		213
		248
		1,490
		1,735

GENERAL CONDITIONS RECAP SUMMARY

DESCRIPTION	EQ. & MATL. TOTAL	LABOR TOTAL	SUB. TOTAL	TOTAL COST
PRECONSTRUCTION SERVICES		\$ -		\$ -
PRECONSTRUCTION SERVICES REIMBURSABLE EXPENSES	\$ -			\$ -
CONSTRUCTION PERSONNEL		\$ -		\$ -
CONSTRUCTION PLANT	\$ -	\$ -	\$ -	\$ -
SERVICES & SAFETY	\$ -	\$ -	\$ -	\$ -
EQUIPMENT/TOOLS	\$ -	\$ -	\$ -	\$ -
MISCELLANEOUS	\$ -	\$ -	\$ -	\$ -
PERMITS, INSURANCE & TAXES	\$ -	\$ -	\$ -	\$ -
TOTAL GENERAL CONDITIONS	\$ -	\$ -	\$ -	\$ -

GENERAL CONDITIONS AS % OF CONSTRUCTION COST = 0.00%
 CONSTRUCTION MANAGER'S OVERHEAD & PROFIT (%) =

Preconstruction Hours: 0
 Construction Hours: 0

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

NOTES:

PERONNEL COST WORKSHEET
(2) High Schools, (3) Middle Schools, (9) Elementary Schools, (2) Support Buildings

PRE-CONSTRUCTION STAFF		
Personnel/Name	Function	Hrly Rate
	Project Exec.	\$ -
	Sr. Proj. Mgr.	\$ -
	Proj. Mgr. 1	\$ -
	Pre-Con Mgr.	\$ -
	Sr. Estimator	\$ -
	Estimator 1	\$ -
	Mech. Est.	\$ -
	Elect. Est.	\$ -
	Scheduler	\$ -
	Proj. Supt.	\$ -
	Accountant	\$ -
	Admin. Asst.	\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -

Base Hours/Year: 2,080				ENTER ACTUAL ANNUAL DOLLAR AMOUNTS														
Mark-up	Hrly Rate with Burden	W-2 Annual Salary	Base Hrly Rate	FICA	Medicare	FUTA	SUTA	Worker Comp	Pension or 401(k)	Medical, Dental & Vision	Holidays	Vacation	Sick Leave	S/LTD Insurance	Term Life Insurance	Vehicle	Cell Phone	Other Misc. Benefits ¹
1.00	0.00		\$ -															
1.00	0.00		\$ -															
1.00	0.00		\$ -															
1.00	0.00		\$ -															
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CONSTRUCTION STAFF		
Personnel/Name	Function	Hrly Rate
	Project Exec.	\$ -
	Sr. Proj. Mgr.	\$ -
	Proj. Mgr. 1	\$ -
	Proj. Mgr. 2	\$ -
	Proj. Mgr. 3	\$ -
	Proj. Mgr. 4	\$ -
	Proj. Engr. 1	\$ -
	Proj. Engr. 2	\$ -
	Proj. Engr. 3	\$ -
	Proj. Engr. 4	\$ -
	Safety Engr.	\$ -
	General Supt.	\$ -
	Proj. Supt. 1	\$ -
	Proj. Supt. 2	\$ -
	Proj. Supt. 3	\$ -
	Proj. Supt. 4	\$ -
	Accountant	\$ -
	Admin. Asst.	\$ -
	Expeditor	\$ -
		\$ -
		\$ -
		\$ -
		\$ -

Base Hours/Year: 2,080				ENTER ACTUAL ANNUAL DOLLAR AMOUNTS														
Mark-up	Hrly Rate with Burden	W-2 Annual Salary	Base Hrly Rate	FICA	Medicare	FUTA	SUTA	Worker Comp	Pension or 401(k)	Medical, Dental & Vision	Holidays	Vacation	Sick Leave	S/LTD Insurance	Term Life Insurance	Vehicle	Cell Phone	Other Misc. Benefits ¹
1.00	0.00		\$ -															
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¹ Explanation of Other Miscellaneous Benefits:

PROJECT NUMBER: 6
PROJECT NAME: (2) High Schools, (2) Middle Schools, (8) Elementary Schools, (2) Support Buildings
CONSTRUCTION GRANT SERVICES: Construction Manager at Large/CM, with O&M

		SUMMARY OF STAFF HOURS		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																								
		2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	2897	2898	2899	2900	2901	2902	2903	2904	2905	2906	2907	2908	2909	2910	2911	2912	2913	2914	2915	2916	2917	2918	2919	2920	2921	2922	2923	2924	2925	2926	2927	2928	2929	2930	2931	2932	2933	2934	2935	2936	2937	2938	2939	2940	2941	2942	2943	2944	2945	2946	2947	2948	2949	2950	2951	2952	2953	2954	2955	2956	2957	2958	2959	2960	2961	2962	2963	2964	2965	2966	2967	2968	2969	2970	2971	2972	2973	2974	2975	2976	2977	2978	2979	2980	2981	2982	2983	2984	2985	2986	2987	2988	2989	2990	2991	2992	2993	2994	2995	2996	2997	2998	2999	3000	3001	3002	3003	3004	3005	3006	3007	3008	3009	3010	3011	3012	3013	3014	3015	3016	3017	3018	3019	3020	3021	3022	3023	3024	3025	3026	3027	3028	3029	3030	3031	3032	3033	3034	3035	3036	3037	3038	3039	3040	3041	3042	3043	3044	3045	3046	3047	3048	3049	3050	3051	3052	3053	3054	3055	3056	3057	3058	3059	3060	3061	3062	3063	3064	3065	3066	3067	3068	3069	3070	3071	3072	3073	3074	3075	3076	3077	3078	3079	3080	3081	3082	3083	3084	3085	3086	3087	3088	3089	3090	3091	3092	3093	3094	3095	3096	3097	3098	3099	3100	3101	3102	3103	3104	3105	3106	3107	3108	3109	3110	3111	3112	3113	3114	3115	3116	3117	3118	3119	3120	3121	3122	3123	3124	3125	3126	3127	3128	3129	3130	3131	3132	3133	3134	3135	3136	3137	3138	3139	3140	3141	3142	3143	3144	3145	3146	3147	3148	3149	3150	3151	3152	3153	3154	3155	3156	3157	3158	3159	3160	3161	3162	3163	3164	3165	3166	3167	3168	3169	3170	3171	3172	3173	3174	3175	3176	3177	3178	3179	3180	3181	3182	3183	3184	3185	3186	3187	3188	3189	3190	3191	3192	3193	3194	3195	3196	3197	3198	3199	3200	3201	3202	3203	3204	3205	3206	3207	3208	3209	3210	3211	3212	3213	3214	3215	3216	3217	3218	3219	3220	3221	3222	3223	3224	3225	3226	3227	3228	3229	3230	3231	3232	3233	3234	3235	3236	3237	3238	3239	3240	3241	3242	3243	3244	3245	3246	3247	3248	3249	3250	3251	3252	3253	3254	3255	3256	3257	3258	3259	3260	3261	3262	3263	3264	3265	3266	3267	3268	3269	3270	3271	3272	3273	3274	3275	3276	3277	3278	3279	3280	3281	3282	3283	3284	3285	3286	3287	3288	3289	3290	3291	3292	3293	3294	3295	3296	3297	3298	3299	3300	3301	3302	3303	3304	3305	3306	3307	3308	3309	3310	3311	3312	3313	3314	3315	3316	3

PROJECT NUMBER: 0

PROJECT NAME: (2) High Schools, (3) Middle Schools, (9) Elementary Schools, (2) Support Buildings

ESTIMATED CONSTRUCTION COST: \$ 69,000,000

CONSTRUCTION DELIVERY METHOD: CM Construction Manager as Constructor, with GMP

START DATE: Preconstruction 3/1/2019

Construction 4/1/2019

FINISH DATE: 3/30/2023

12/31/2023

PROJECT DURATION: Months Weeks Days
Pre-constr 50 213 1,490
Construction 58 248 1,735

CODE NO.	DESCRIPTION	QTY.	UNIT	UNIT PRICE	(E) EQUIP. & MAT'L	(L) LABOR	(S) SUB-CONTRACTOR	TOTAL COST
	CONSTRUCTION PLANT							
E	PROJECT OFFICE 1		MO		\$ -	\$ -	\$ -	\$ -
E	PROJECT OFFICE 2		MO		\$ -	\$ -	\$ -	\$ -
E	ARCHITECT-OWNER OFFICE		MO		\$ -	\$ -	\$ -	\$ -
E	TRADES TRAILER		MO		\$ -	\$ -	\$ -	\$ -
E	TOOL/STORAGE TRAILER		MO		\$ -	\$ -	\$ -	\$ -
E	STORAGE RENTAL		MO		\$ -	\$ -	\$ -	\$ -
E	JOB SET-UP/REMOVAL - 1		LS		\$ -	\$ -	\$ -	\$ -
E	JOB SET-UP/REMOVAL - 2		LS		\$ -	\$ -	\$ -	\$ -
E	TEMPORARY TOILETS - 1		MO		\$ -	\$ -	\$ -	\$ -
E	TEMPORARY TOILETS - 2		MO		\$ -	\$ -	\$ -	\$ -
E	OFFICE FURNITURE - 1		MO		\$ -	\$ -	\$ -	\$ -
E	OFFICE FURNITURE - 2		MO		\$ -	\$ -	\$ -	\$ -
E	OFFICE EQUIPMENT - FAX/Copy - 1		MO		\$ -	\$ -	\$ -	\$ -
E	OFFICE EQUIPMENT - FAX/Copy - 2		MO		\$ -	\$ -	\$ -	\$ -
E	COMPUTER EQUIP./NETWORK - 1		LS		\$ -	\$ -	\$ -	\$ -
E	COMPUTER EQUIP./NETWORK - 2		LS		\$ -	\$ -	\$ -	\$ -
E	OFFICE SUPPLIES - 1		MO		\$ -	\$ -	\$ -	\$ -
E	OFFICE SUPPLIES - 2		MO		\$ -	\$ -	\$ -	\$ -
E	TELEPHONE - 1		MO		\$ -	\$ -	\$ -	\$ -
E	TELEPHONE - 2		MO		\$ -	\$ -	\$ -	\$ -
E	POSTAGE & EXPRESS - 1		MO		\$ -	\$ -	\$ -	\$ -
E	POSTAGE & EXPRESS - 2		MO		\$ -	\$ -	\$ -	\$ -
E	JOB SITE RADIO/NEXTEL		MO		\$ -	\$ -	\$ -	\$ -
E	OFFICE ELECTRIC - 1		MO		\$ -	\$ -	\$ -	\$ -
E	OFFICE ELECTRIC - 2		MO		\$ -	\$ -	\$ -	\$ -
E	OFFICE FUEL - 1		MO		\$ -	\$ -	\$ -	\$ -
E	OFFICE FUEL - 2		MO		\$ -	\$ -	\$ -	\$ -
E	OFFICE PLUMBING		LS		\$ -	\$ -	\$ -	\$ -
	CONSTRUCTION PLANT TOTAL				\$ -	\$ -	\$ -	\$ -

PROJECT NAME: (2) High Schools, (3) Middle Schools, (9) Elementary Schools, (2) Support Buildings

	<u>Preconstruction</u>	<u>Construction</u>
START DATE:	3/1/2019	4/1/2019
FINISH DATE:	3/30/2023	12/31/2023

		<u>Months</u>	<u>Weeks</u>	<u>Days</u>
PROJECT DURATION:	Pre-constr	50	213	1,490
	Construction	58	248	1,735

File Name = D2 - Cost Workbook.xlsx/Constr Support
Run Date = 12/27/2018

PROJECT NUMBER: 0

PROJECT NAME: (2) High Schools, (3) Middle Schools, (9) Elementary Schools, (2) Support Buildings

ESTIMATED CONSTRUCTION COST: \$ 69,000,000

CONSTRUCTION DELIVERY METHOD: CM Construction Manager as Constructor, with GMP

START DATE: Preconstruction 3/1/2019 Construction 4/1/2019

FINISH DATE: 3/30/2023 12/31/2023

PROJECT DURATION: Months Weeks Days
Pre-constr 50 213 1,490
Construction 58 248 1,735

CODE NO.	DESCRIPTION	QTY.	UNIT	UNIT PRICE	(E) EQUIP. & MAT'L	(L) LABOR	(S) SUB-CONTRACTOR	TOTAL COST
	EQUIPMENT & TOOLS							
E	AUTOMOBILES		MO		\$ -	\$ -	\$ -	\$ -
E	PICK-UP TRUCK		MO		\$ -	\$ -	\$ -	\$ -
E	FLATBED TRUCK		MO		\$ -	\$ -	\$ -	\$ -
E	LEVEL & TRANSIT		MO		\$ -	\$ -	\$ -	\$ -
E	MISC. LAYOUT MATERIAL		MO		\$ -	\$ -	\$ -	\$ -
E	AIR COMPRESSOR		MO		\$ -	\$ -	\$ -	\$ -
E	FORK LIFT		MO		\$ -	\$ -	\$ -	\$ -
E	CRANE		MO		\$ -	\$ -	\$ -	\$ -
E	CRANE CARTAGE		LS		\$ -	\$ -	\$ -	\$ -
E	CRANE SET & REMOVAL		LS		\$ -	\$ -	\$ -	\$ -
E	GENERATOR		MO		\$ -	\$ -	\$ -	\$ -
E	EQUIPMENT OPERATOR		MO		\$ -	\$ -	\$ -	\$ -
E	HOIST RENTAL		MO		\$ -	\$ -	\$ -	\$ -
E	HOIST SET & REMOVAL		LS		\$ -	\$ -	\$ -	\$ -
E	HOIST LANDINGS		EA		\$ -	\$ -	\$ -	\$ -
E	HOIST INSPECTION & SERVICE		MO		\$ -	\$ -	\$ -	\$ -
E	HOIST MOVES		EA		\$ -	\$ -	\$ -	\$ -
E	HOIST FOUNDATIONS		LS		\$ -	\$ -	\$ -	\$ -
E	HOIST OPERATOR		MO		\$ -	\$ -	\$ -	\$ -
E	ELEVATOR USAGE		MO		\$ -	\$ -	\$ -	\$ -
E	ELEVATOR CAB PROTECTION		LS		\$ -	\$ -	\$ -	\$ -
E	ELEVATOR OPERATOR		MO		\$ -	\$ -	\$ -	\$ -
E	BOTTOM ENCLOSURES/HOISTS		EA		\$ -	\$ -	\$ -	\$ -
E	GAS, OIL & MAINTENANCE		LS		\$ -	\$ -	\$ -	\$ -
E	MISCELLANEOUS SMALL TOOLS		LS		\$ -	\$ -	\$ -	\$ -
	EQUIPMENT & TOOLS TOTAL				\$ -	\$ -	\$ -	\$ -

PROJECT NUMBER: 0

PROJECT NAME: (2) High Schools, (3) Middle Schools, (9) Elementary Schools, (2) Support Buildings

ESTIMATED CONSTRUCTION COST: \$ 69,000,000

CONSTRUCTION DELIVERY METHOD: CM Construction Manager as Constructor, with GMP

START DATE: Preconstruction 3/1/2019 Construction 4/1/2019

FINISH DATE: 3/30/2023 12/31/2023

PROJECT DURATION: Months Weeks Days
Pre-constr 50 213 1,490
Construction 58 248 1,735

CODE NO.	DESCRIPTION	QTY.	UNIT	UNIT PRICE	(E) EQUIP. & MAT'L	(L) LABOR	(S) SUB-CONTRACTOR	TOTAL COST
	MISCELLANEOUS							
S	LICENSED SURVEY		LS		\$ -	\$ -	\$ -	\$ -
S	INSPECTION TESTS		LS		\$ -	\$ -	\$ -	\$ -
S	SPECIAL TESTS		LS		\$ -	\$ -	\$ -	\$ -
L	ON-GOING CLEAN-UP		HR		\$ -	\$ -	\$ -	\$ -
S	FINAL CLEAN-UP - Phase 1		SF		\$ -	\$ -	\$ -	\$ -
S	FINAL CLEAN-UP - Phase 2		SF		\$ -	\$ -	\$ -	\$ -
L	GLASS CLEANING		SF		\$ -	\$ -	\$ -	\$ -
S	CLEAN ROADS & WALKS		LS		\$ -	\$ -	\$ -	\$ -
L	PUNCH LIST		HR		\$ -	\$ -	\$ -	\$ -
S	SNOW REMOVAL		LS		\$ -	\$ -	\$ -	\$ -
L	PREMIUM TIME		LS		\$ -	\$ -	\$ -	\$ -
L	SHOW-UP TIME		LS		\$ -	\$ -	\$ -	\$ -
E	TRAVEL ALLOWANCE		LS		\$ -	\$ -	\$ -	\$ -
E	PARKING ALLOWANCE		MO		\$ -	\$ -	\$ -	\$ -
E	LIVING ALLOWANCE		MO		\$ -	\$ -	\$ -	\$ -
E	RELOCATION EXPENSE		LS		\$ -	\$ -	\$ -	\$ -
E	TRUCKING & CARTAGE		TP		\$ -	\$ -	\$ -	\$ -
S	PROGRESS PHOTOS		MO		\$ -	\$ -	\$ -	\$ -
S	C.P.M. CONSULTANT		LS		\$ -	\$ -	\$ -	\$ -
S	PLANS & SPECS REPRODUCTION		LS		\$ -	\$ -	\$ -	\$ -
	MISCELLANEOUS TOTAL				\$ -	\$ -	\$ -	\$ -
	PERMITS, INSURANCE & TAXES							
E	BUILDING PERMIT - by Owner		LS		\$ -	\$ -	\$ -	\$ -
E	SPECIAL PERMITS - by Owner		LS		\$ -	\$ -	\$ -	\$ -
E	ESCALATION		LS		\$ -	\$ -	\$ -	\$ -
E	SPECIAL FEES - by Owner		LS		\$ -	\$ -	\$ -	\$ -
E	SITE PLAN REVIEW - by Owner		LS		\$ -	\$ -	\$ -	\$ -
E	BOND ON SUBS		LS		\$ -	\$ -	\$ -	\$ -
E	PERFORMANCE & PAYMENT BOND	69,000,000	LS		\$ -	\$ -	\$ -	\$ -
E	BUILDERS RISK INSURANCE - by Owner		LS		\$ -	\$ -	\$ -	\$ -
E	GENERAL LIABILITY INSURANCE	69,000,000	LS		\$ -	\$ -	\$ -	\$ -
E	CASUALTY LOSS		LS		\$ -	\$ -	\$ -	\$ -
E	RECORD DRAWINGS		LS		\$ -	\$ -	\$ -	\$ -
S	SUPPORT SERVICES		LS		\$ -	\$ -	\$ -	\$ -
	PERMITS, INSURANCE & TAXES TOTAL				\$ -	\$ -	\$ -	\$ -

SUMMARY & ERROR CHECK

EQUIPMENT & MATERIALS SUBTOTAL:	\$ -	TRUE
LABOR SUBTOTAL:	\$ -	TRUE
SUBCONTRACTOR SUBTOTAL:	\$ -	TRUE
UNIDENTIFIED SUBTOTAL:	\$ -	
TOTAL:	\$ -	TRUE

Project Month (Overall)

[illegible]

**GROSSE POINTE PUBLIC SCHOOL SYSTEM
NOVEMBER 2018 BOND PROGRAM
REQUEST FOR PROPOSAL (RFP) – CONSTRUCTION MANAGEMENT SERVICES
ATTACHMENT D.2a – COST WORKBOOK INSTRUCTIONS
DECEMBER 20, 2018**

**INSTRUCTIONS FOR COMPLETING CONSTRUCTION MANAGER'S COST PROPOSAL for Grosse
Pointe Public School System – November 2018 Bond Program**

The Construction Manager's Cost Proposal for Grosse Pointe Public School System (GPPSS) is provided in a Microsoft® Excel™ workbook. The worksheets within the workbook are linked. The calculation (formula) cells are locked. You can only access (input) the **blue text** cells. The purpose is to allow GPPSS (Owner) to compare and evaluate all Cost Proposals equally as much as possible. In most cases, you will only need to input the same information once.

1. Begin at the "Summary" worksheet.
 - a. Enter the Start Date and Finish Date for Preconstruction Services. It will provide you a point of reference for duration of your Preconstruction Services.
 - b. Enter the Start Date and Finish Date for Construction Services. It will provide you a point of reference for duration of your Construction Services.
2. Next, go to the "Personnel Cost Worksheet." From your proposal, you should have already assigned your Project Team Members.
 - a. Enter their names, project function, and corresponding W-2 Annual Salary, Payroll Taxes, Company 401(k) or Pension Contribution, Medical/Dental/Vision, Vehicle, Cell Phone, Additional Paid Time-off, and Other Miscellaneous Benefits. *You may change the employees' project function to reflect your company's job title or description.*
 - b. Enter the Base Hours per Year. For example, if your company policy provides each employee 3 weeks of vacation, 5 personal/sick days, and 6 paid holidays per years, the Base Hours per Year will be equal to $2,080 - 120 - 40 - 48 = 1,872$ hours.
 - c. Enter the "Mark-up" rate for staff for Preconstruction Services. For Construction Phase services, the compensation term of the Agreement between Owner and Construction Manager is on an "Actual Cost" plus "Construction Manager's Overhead Costs and Profit" basis. Therefore, labor cost mark-up is 1.0.
3. Next, go to the "Summary of Staff Hours" worksheet.
 - a. The Personnel/Name, Function and Hourly Rate cells should have already been "copied over" from the "Personnel Cost Worksheet." You may also cut and paste the appropriate information (corresponding cells) from the "Personnel Cost Worksheet" directly onto the "Summary of Staff Hours" worksheet, though it would normally be unnecessary to do so.
 - b. Complete the estimated hours for each employee by entering the data into appropriate cells in the tables. The yellow table is for Preconstruction Services. The green table is for Construction Services.
 - c. The last two right columns summarize the hours and costs.

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ATTACHMENT D.2a – COST WORKBOOK INSTRUCTIONS
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4. Next, go to the “Construction Support” worksheet.
 - a. Column “A” provides a category cost allocation code.
 - i. Enter “E” if you wish the cost item to allocated towards “Equipment & Material” cost category.
 - ii. Enter “L” if you wish the cost item to allocated towards “Labor” cost category.
 - iii. Enter “S” if you wish the cost item to allocated towards “Sub-contractor” cost category.
 - iv. *Please be careful when entering the category cost allocation codes. Entries other than “E”, “L”, “S” or by leaving the cell blank will cause the cost item not to be allocated or tabulated.*
 - b. You may enter your company’s cost code for each cost (line) item in Column “B”.
 - c. We have provided a cost item checklist in Column “C”. The checklist should cover most General Condition items for the Project. You may alter the descriptions or add to the list as necessary; but please clearly identifying your changes using a different font color to help the Owner to spot them easier.
 - d. Complete the “Quantity” and “Unit Price” columns as required. Edit the “Unit” as appropriate.
 - e. Unit Price for “Performance Bond” and “Construction Liability Insurance” should be expressed in \$ per thousand dollar of Construction Cost – e.g., \$7.50 per thousand is expressed as 0.0075.
5. Return to the “Summary” worksheet after you have completed the above worksheets.
 - a. All the cells in the “General Conditions Recap Summary” Table should now have all been completed from your previously completed worksheets. *Check to verify that all the numbers are transferred correct.*
 - b. Complete the line “Preconstruction Services Reimbursable Expenses”, as needed.
 - c. Complete the line “Construction Manager’s Overhead & Profit” by providing a percentage (fee) in the appropriate cell.
6. You will not need to complete the “Staff Cashflow” worksheet. It automatically tabulates your staff cost data in order to help the Owner plan the Project Cashflow.
7. *Always check and recheck your work before submitting your proposal.*
8. You may need to re-format the worksheets before you print them. You should print the “Summary of Staff Hours” and “Staff Cashflow” using 11”x17” size paper. All the other worksheets can be printed in 8½”x11” paper. Please include in your Proposal three (3) printed (hard) copies and one (1) electronic copy.

GROSSE POINTE PUBLIC SCHOOL SYSTEM
NOVEMBER 2018 BOND PROGRAM
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ATTACHMENT D.3 – FIRM EXPERIENCE
DECEMBER 20, 2018

[illegible]

DECEMBER 20, 2018

[illegible]

Legend
* Required Field
Editable Field
Read Only Field

CM Request for Qualifications (CMRFQ)

Project:	Grosse Pointe Public School System
Process:	CM Request for Qualifications

INSTRUCTIONS

PLEASE SUBMIT THIS COMPLETED DOCUMENT IN ACCORDANCE WITH THE RFP INSTRUCTIONS.

(Remember to send the Word version of this document when submitting).

STATEMENT OF QUALIFICATIONS

A response must be given for all items in this qualification form. If an item does not apply, please state "N/A" in the field.

BUSINESS NAME:	
BUSINESS STREET ADDRESS:	
BUSINESS CITY:	
BUSINESS STATE:	
BUSINESS ZIP:	
BUSINESS TELEPHONE NUMBER:	
TAX ID NUMBER:	

DUNS NUMBER:	
CONTACT PERSON NAME:	
CONTACT PERSON POSITION/TITLE:	
CONTACT PERSON TELEPHONE NUMBER (if different):	
CONTACT PERSON E-MAIL ADDRESS:	

1. BUSINESS CLASSIFICATION

If you have any questions regarding your size classification (Large or Small Business), contact your local office of the Small Business Administration or check their website: www.sba.gov/size/

Type of Business:	-- Please select an option --
Ownership (at least 51%):	-- Please select an option --
C Minority/Disadvantaged (MBE):	-- Please select an option --
Labor Union Affiliation (if any):	

2. BUSINESS ORGANIZATION

If this is a Joint Venture, please attach a copy of the Joint Venture Agreement and corporate minutes authorizing a joint venture. Individual members of Joint Ventures must be pre-qualified. **Submit a separate qualification statement for each member.**

Business Organization:	-- Please select an option --
State of Incorporation:	
Year Incorporated:	
Subsidiary of:	
Headquarters City:	
Headquarters State:	
Headquarters Zip:	
Corporation DUNS	

Number:	
Parent To:	
List Subsidiaries & Divisions:	
Partnership:	-- Please select an option --
State Where Partnership Filed:	
County Where Partnership Filed:	
Date of Partnership Organization:	
Partnership DUNS Number:	
Joint Venture:	
Date of Joint Venture Organization:	
Joint Venture DUNS Number:	
Individual Proprietorship:	
Date of Individual Proprietorship Organization:	
Headquarters Street Address:	
Years your organization has been in business as a Construction Manager:	
Years your organization has been in business under its present name:	
List other or former names under which your	

organization has operated:	
List key officers who are authorized to make commitments on this project in your organization:	

3. LICENSING INFORMATION

Company registration/license numbers, locations and the trade categories to which they apply:	
---	--

4. EXPERIENCE

For the most recent five years, what percentage of your firm's revenues were generated by performing the following: (Please provide information for at least one of the prospect types).

	Select all that apply
Experience:	<input type="checkbox"/> Construction Manager (CM) <input type="checkbox"/> General Contractor (GC) <input type="checkbox"/> Design / Builder (DB) <input type="checkbox"/> Primary Subcontractor (PS) <input type="checkbox"/> Other
CM 2013 %:	
CM 2014 %:	
CM 2015 %:	
CM 2016 %:	
CM 2017 %:	
GC 2013 %:	
GC 2014 %:	
GC 2015 %:	
GC 2016 %:	

GC 2017 %:	
D/B 2013 %:	
D/B 2014 %:	
D/B 2015 %:	
D/B 2016 %:	
D/B 2017 %:	
PS 2013 %:	
PS 2014 %:	
PS 2015 %:	
PS 2016 %:	
PS 2017 %:	
Other Experience:	Please describe the type of experience
OTHER 2013 %:	
OTHER 2014 %:	
OTHER 2015 %:	
OTHER 2016 %:	
OTHER 2017 %:	

Experience - Workload

In the most recent 5 years, what percentage of your total workload was for the following? (Total to 100%)

Educational %:	
Government %:	
Healthcare %:	
Industrial %:	

Corporate / Office %:	
Commercial / Parking %:	
Residential %:	
Other %:	
Total Workload %:	

5. STAFFING

Provide a brief description of your firm's pre-construction services and project (scheduling and cost) management capabilities; and attach a project cost accounting and payment processing process flowchart.

Total Number of Full Time Personnel:		Number of Executive Management:	
Number of Project Managers:		Number of Estimators / Pre-Construction:	
Number of On-Site Superintendents:		Number of Project Engineers:	
Number of Administrative Support:		Number of Safety Managers:	
Number of Tradesmen (list trades):			
List Trades Here:			

Check all types of self-performed work that apply.

Does your Company Self-Perform Work?:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Mechanical:	<input type="checkbox"/> Plumbing & Piping <input type="checkbox"/> HVAC <input type="checkbox"/> Sheet Metal <input type="checkbox"/> Fire Protection <input type="checkbox"/> Other
Site Work:	<input type="checkbox"/> Earthwork <input type="checkbox"/> Hauling <input type="checkbox"/> Fencing <input type="checkbox"/> Landscaping <input type="checkbox"/> U/G Utilities & Sewer <input type="checkbox"/> Asphalt Paving <input type="checkbox"/> Concrete Paving	Mechanical Other:	

	<input type="checkbox"/> Demolition		
Concrete:	<input type="checkbox"/> Foundations <input type="checkbox"/> Curbs, Gutters & Sidewalks <input type="checkbox"/> Cast-in-place <input type="checkbox"/> Pre-Cast <input type="checkbox"/> Other	Environmental:	<input type="checkbox"/> Asbestos Abatement <input type="checkbox"/> Lead Abatement <input type="checkbox"/> Hazardous Spill Clean Up <input type="checkbox"/> U/G Storage Tank Removal <input type="checkbox"/> Soil Remediation <input type="checkbox"/> Other
Concrete Other:		Environmental Other:	
Carpentry:	<input type="checkbox"/> Framing / Rough <input type="checkbox"/> Finish <input type="checkbox"/> Cabinetry / Casework <input type="checkbox"/> Architectural Woodwork <input type="checkbox"/> Drywall <input type="checkbox"/> Other	Metal / Structural Steel:	<input type="checkbox"/> Structural Steel Fabricator <input type="checkbox"/> Structural Steel Erector <input type="checkbox"/> Metal Decking <input type="checkbox"/> Miscellaneous Metal <input type="checkbox"/> Other
Carpentry Other:		Metal / Structural Steel Other:	
Finishes:	<input type="checkbox"/> Acoustical Treatment <input type="checkbox"/> Painting & Wallcovering <input type="checkbox"/> Flooring - Tile & Terrazzo <input type="checkbox"/> Flooring - Marble & Granite <input type="checkbox"/> Flooring - Carpet & Vinyl <input type="checkbox"/> Doors <input type="checkbox"/> Windows, Glass, Glazing <input type="checkbox"/> Other	Roofing:	<input type="checkbox"/> Built-Up Roofing Systems <input type="checkbox"/> Single-Ply Roofing Systems <input type="checkbox"/> Shingled Roofs <input type="checkbox"/> Standing Seam Metal Roofs <input type="checkbox"/> Other
Finishes Other:		Roofing Other:	
Electrical:	<input type="checkbox"/> Controls <input type="checkbox"/> Substations <input type="checkbox"/> Security Systems <input type="checkbox"/> Fire Alarm <input type="checkbox"/> Communications Systems <input type="checkbox"/> A/V Systems <input type="checkbox"/> High Voltage <input type="checkbox"/> Other	Building Equipment:	<input type="checkbox"/> Boiler <input type="checkbox"/> Food Service Equipment <input type="checkbox"/> Elevators <input type="checkbox"/> Other
Electrical Other:		Building Equipment Other:	
Masonry:	<input type="checkbox"/> Brick / Block <input type="checkbox"/> Stone <input type="checkbox"/> Restoration	Other:	<input type="checkbox"/> Construction Clean-Up <input type="checkbox"/> Final Cleaning <input type="checkbox"/> Other

Masonry Other:	<input type="checkbox"/> Cleaning <input type="checkbox"/> Other		

6. REFERENCES

Owner Reference 1 Company Name::		Bank Reference 1 Company Name:	
Owner Reference 1 City, State, Zip::		Bank Reference 1 City, State Zip:	
Owner Reference 1 Telephone Number::		Bank Reference 1 Telephone Number:	
Owner Reference 2 Company Name::		Bank Reference 2 Company Name:	
Owner Reference 2 City, State, Zip::		Bank Reference 2 City, State Zip:	
Owner Reference 2 Telephone Number::		Bank Reference 2 Telephone Number:	

7. INSURANCE

Liability: Limits your company carries

Please attach a copy of the 5 year loss run report.

General Liability: Per Occurrence:		General Liability: Aggregate:	
Umbrella Liability: Per Occurrence:		Umbrella Liability: Aggregate:	
Automobile Liability: Per Occurrence:		Automobile Liability: Aggregate:	
Insurance Company Name:		Insurance Company City, State Zip:	
Insurance Contact Person:		Insurance Contact Phone Number:	

Insurance Broker:		Insurance Broker City, State Zip:	
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8. FINANCIAL INFORMATION

Bonding Company Name:		Bonding Company City, State Zip:	
Bonding Company Contact Person:		Bonding Company Contact Phone Number:	
Your Firm's Single Bonding Capacity:		Your Firm's Aggregate Bonding Capacity:	
Minimum size jobs your firm would prefer to bid:		Maximum size jobs your firm would prefer to bid:	
State total worth of work currently in progress and under contract:			

State annual amount of construction work performed during the most recent five years

Please attach a copy of the most recent audited financial statement of your firm.

Annual amount of construction work performed during 2013:	
Annual amount of construction work performed during 2014:	
Annual amount of construction work performed during 2015:	
Annual amount of construction work performed during 2016:	
Annual amount of construction work	

performed during 2017:	
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Claims and Suits (If the answer to any of these question is "Yes", please attach separate document with details).	
Has your organization ever defaulted on a contract?:	-- Please select an option --
Are there any judgements, claims, arbitration proceedings or suits pending or outstanding?:	-- Please select an option --
Has your organization been party to any lawsuits or claims with regard to construction contracts?:	(Within the last 5 years) -- Please select an option --

9. SAFETY PROGRAM

Provide a list of safety and/or health training courses to which you have subscribed, the number of employees who have received training in each course, and the name of the company that conducted the training. If a particular training topic is repeated at certain intervals, indicate the frequency of training of that topic. If you have any citations in the past 5 years from OSHA, MIOSHA, or any other safety agency, please attach an explanation.

Name of Contractor's Safety Director / Representative (attach resume'):		Safety Representative Phone Number:	
Does your company have a formal written Safety Program?:	-- Please select an option --	If no safety program, please explain how safety is taught, promoted and enforced by your company:	
Website Address (If Safety Program is available on line):			

A Safety, Health, and Accident Prevention Program?:	-- Please select an option --	Supervisor Safety Training?:	-- Please select an option --
A program to ensure safety & health issues are pre-planned into each project and work operation?:	-- Please select an option --	Task Specific Training?:	-- Please select an option --

A Hazard Communication Program?:	-- Please select an option --	OSHA Required Training?:	-- Please select an option --
An Accident / Incident Investigation Procedure?:	-- Please select an option --	Training repeated at regular intervals for all workers?:	-- Please select an option --
A Safety & Health Training Program?:	-- Please select an option --	Does your company ensure that any subcontractors you use will have programs equivalent to yours?:	-- Please select an option --
New Employee / Project Orientation?:	-- Please select an option --	Disciplinary Program?:	-- Please select an option --
Weekly Toolbox Meetings?:	-- Please select an option --	Safety Recognition Program?:	-- Please select an option --
Daily Job Briefings?:	-- Please select an option --	Daily job hazard analysis?:	-- Please select an option --
		First Aid and CPR training and certification?:	-- Please select an option --

Complete the Safety Information for the most recent three (3) **full** years using the Loss Run reports from your insurance carrier and your OSHA 200's and/or OSHA 300's.

(1) Report figures as they appear on OSHA forms

(2) Recordable Incident Rate = # Total Recordable Injuries x 200,000 / Total Hours Worked

(3) Lost-Time Incident Rate = # of Lost Time Incidents x 200,000

An explanation with corrective action plans must be enclosed for all current EMR's over 1.0 along with copies of your Loss Run reports/OSHA 200's for the past 3 years.

Interstate EMR 2015:		(1) Lost Work Day Injuries 2015:	
Interstate EMR 2016:		(1) Lost Work Day Injuries 2016:	
Interstate EMR 2017:		(1) Lost Work Day Injuries 2017:	

State EMR 2015:		(1) Lost Work Days 2015:	
State EMR 2016:		(1) Lost Work Days 2016:	
State EMR 2017:		(1) Lost Work Days 2017:	
(1) Recordable Incidents 2015:		(3) Lost-Time Incident Rate 2015:	
(1) Recordable Incidents 2016:		(3) Lost-Time Incident Rate 2016:	
(1) Recordable Incidents 2017:		(3) Lost-Time Incident Rate 2017:	
(2) Recordable Incidents Rate 2015:		Fatalities 2015:	
(2) Recordable Incidents Rate 2016:		Fatalities 2016:	
(2) Recordable Incidents Rate 2017:		Fatalities 2017:	
(1) Days Away Restricted Transfer 2015:		Hours Worked 2015:	
(1) Days Away Restricted Transfer 2016:		Hours Worked 2016:	
(1) Days Away Restricted Transfer 2017:		Hours Worked 2017:	
(1) Lost & Restricted Work Day Injuries 2015:			
(1) Lost & Restricted Work Day Injuries 2016:			
(1) Lost & Restricted Work Day Injuries 2017:			

Submit copy of EMR information on Your Insurance Carrier's letterhead.

Insurance Premium Eligible for Experience Modification Rating?:	-- Please select an option --
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Self-Insured?:	-- Please select an option --
Government-Insured?:	-- Please select an option --

10. AFFIRMATIVE ACTION

If yes, provide a copy of your firm's Affirmative Action Program/Statement.

Does your firm have an Affirmative Action Program?:	-- Please select an option --
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11. QUALITY ASSURANCE

A. Provide a copy of your firm's Quality Policy Statement and Table of Contents from your Quality Manual.

B. If certified, (ISO, Q1, etc.) provide a copy of your firm's quality certification document(s).

C. Provide a copy of your most recent Customer Satisfaction Survey produced from the program.

Does your Firm have a Quality Assurance Program?:	-- Please select an option --
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12. SUPPLEMENTAL INFORMATION

Please attach any additional information you feel is relevant to your qualifications to perform this project.

ATTACHMENT CHECKLIST (Select all that apply)

Diversity Certification, if applicable (Section 1):	-- Please select an option --	MIOSHA, OSHA, etc. citations (Section 9):	-- Please select an option --
Joint Venture Agreement (Section 2):	-- Please select an option --	EMR Corrective Action Plans (Section 9):	-- Please select an option --
Pre-con Services & Management Capabilities (Section 5):	-- Please select an option --	EMR Letter (Section 9):	-- Please select an option --
5 year loss run (Section 7):	-- Please select an option --	Affirmative Action Statement (Section 10):	-- Please select an option --

Claims and Suits (Section 8):	-- Please select an option --	Quality Policy Statement (Section 11):	-- Please select an option --
Firm's Audited Financial Statement (Section 8):	-- Please select an option --	Quality Certification (Section 11):	-- Please select an option --
"No" Explanations / Safety Program (Section 9):	-- Please select an option --	Customer Satisfaction Survey (Section 11):	-- Please select an option --

13. SUBMISSION

Submitting this Statement of Qualifications affirms that all the information provided herein is true and sufficiently complete so as not to be misleading.

Name of Submitting Organization:	
Name of Individual Submitting and Attesting to Accuracy of Qualifications:	
Title of Submitting Individual:	
Date Submitted:	

Comments

AFFIDAVIT OF COMPLIANCE – IRAN ECONOMIC SANCTIONS ACT
Michigan Public Act No. 517 of 2012

D6-1

**GROSSE POINTE PUBLIC SCHOOL SYSTEM
NOVEMBER 2018 BOND PROGRAM
REQUEST FOR PROPOSAL (RFP) – CONSTRUCTION MANAGEMENT SERVICES
ATTACHMENT D.7 – FAMILIAL DISCLOSURE STATEMENT
DECEMBER 20, 2018**

Familial Disclosure Affidavit

The undersigned, the owner or authorized officer of _____
(the “Firm”), pursuant to the familial disclosure requirement provided in the Grosse Pointe Public School System (the “Owner”) Request For Proposals For Construction Management Services, hereby represents and warrants that, except as provided below, no familial relationships exist between the owner or any employee of the Firm, and any member of the Board of Education of the School District or the Superintendent of the School District. A list of the School District’s Board of Education Members and its Superintendent may be found at <https://mi01000971.schoolwires.net/>

List any Familial Relationships:

FIRM:

Name of FIRM

By: _____

Its: _____

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2019, by:

_____, Notary Public

_____ County, _____

My Commission Expires: _____

Acting in the County of: _____

