

**EXHIBIT A**

**To**

**Request for Proposals from Construction Managers for a  
Municipal Garage by the Village of Little Chute, WI**

**Preliminary Scope Overview**

**(attached)**



**Village of Little Chute**  
**Preliminary Scope Overview**  
**January 14, 2016**

## **Purpose**

The Village of Little Chute is soliciting proposals from qualified firms for the design and construction management of a new Municipal Services building to serve the Departments of Public Works and Parks, Recreation and Forestry. The Village owns a ~8 acre site in the Village of Little Chute Industrial Park that will be utilized for a new facility.

The purpose of this RFP is to identify experienced Design and Construction Management firms with the best combination of qualifications, experience with projects of a similar type and scope, experience with intensive collaboration with an owner during programming, design, pre-construction and proven practices in construction management services to develop and deliver the Project efficiently and effectively with respect to time and cost. The village is committed to a fiscally responsible delivery method for this major facility, while also ensuring that the long-term needs of the village are taken into account during the design phase. The village will also work with the selected firm to ensure that operational efficiency is maximized in design and layout of this new facility.

## **Background Information**

The Village of Little Chute intends to construct a new public works/parks, recreation forestry garage (Municipal Service Building) in the Village of Little Chute. The garage's program will include heated parking, space for vehicles, parts storage, signage, truck bay, mechanic area and associated bays, bulk fluids, lockers, and office space for supervisors. Site facilities will include paved areas, parking, utilities, lighting and landscaping. In addition, a yard waste site and salt storage facility will be added to this site. The entire facility is estimated to be approximately 30,000 -40,000 square feet on one level. For additional information, please see the attached Needs Assessment.

Strong consideration will be given to the firms which have experience with facilities that are similar in type and size, and those with previous designs, which are creative, provide flexibility in their use, provide for future reuse or expansion, make efficient use of the site and are energy efficient.

## **Scope of Services**

The Village is interested in retaining firms to assist with programming, preliminary design, bidding and construction management, according to the following Scope of Services. It is intended that the scope will be turnkey and a fully executed project. This list is not meant to be fully exhaustive. Please provide your recommended scope of services with your submittal/proposal.

1. **Preliminary Design and Budgeting**
  - a. Review owner's needs, goals, and priorities.
  - b. Assess proposed site.
  - c. Evaluate owner's budget and financing.
  - d. Establish and set team meetings agendas and minutes.
  - e. Develop project's critical timeline, develop calendar of events.
  - f. Assist in identifying applicable project funding programs if available.

2. **Project Programming**

- a. Interview the appropriate village personnel needed for developing the square footage/space requirements of the building.
- b. Assist the owner in obtaining a property survey if not available to verify existing property lines and topography.
- c. Evaluate energy efficient building materials, equipment and systems.
- d. Assess owner's site conditions and needs such as storm water management and traffic flow, etc.

3. **Design and Development of Building Packages for Building(s), Grading and Utilities**

- a. Develop schematic site plan showing location of the building, salt storage, parking lot and green space on the site.
- b. Develop concept floor plans based on space needs analysis and long range plans.
- c. Develop schematic elevations of building exterior indicating materials and preliminary construction type.
- d. Provide project construction cost estimate from space needs analysis and concept plans.
- e. Develop and coordinate Construction Documents for Civil, Architectural, MEPs and specifications to be used for bidding and construction.
- f. Work with Village to discuss alternatives to snow storage in the Village, utilizing properties under current Village ownership.

4. **Construction Management**

- a. Bid package design and execution for multiple divisions of work.
- b. Assist owner in prequalification of prospective bidders.
- c. Conduct pre-bid meetings.
- d. Conduct bid review of all multiple bid units and make recommendation to village for award of each bid unit which will be contracted through the construction manager.
- e. Provide full time on-site supervision whenever work is being performed to ensure quality is being attained and compliance with plans and specifications.
- f. Administer all pay requests and change orders.



**EXHIBIT B**

**To**

**Request for Proposals from Construction Managers for a  
Municipal Garage by the Village of Little Chute, WI**

**Preliminary Geotechnical Report**

**(attached)**



**AMERICAN  
ENGINEERING  
TESTING, INC.**

**CONSULTANTS**

- ENVIRONMENTAL
- GEOTECHNICAL
- MATERIALS
- FORENSICS

**REPORT OF PRELIMINARY  
GEOTECHNICAL EXPLORATION  
NIXON STREET INDUSTRIAL SITE  
LITTLE CHUTE, WISCONSIN**

**January 19, 2012**

**AET Project No. 12-00695**

**Prepared for:** Village of Little Chute  
1940 Buchanan Street  
Little Chute, Wisconsin 54140

[www.amengtest.com](http://www.amengtest.com)





CONSULTANTS  
• ENVIRONMENTAL  
• GEOTECHNICAL  
• MATERIALS  
• FORENSICS

January 19, 2012

Mr. Roy Van Gheem, P.E.  
Director of Public Works  
Village of Little Chute  
1940 Buchanan Street  
Little Chute, Wisconsin 54140

RE: Report of Preliminary Geotechnical Exploration  
Nixon Street Industrial Site  
Little Chute, Wisconsin  
AET Project No. 12-00695

Dear Mr. Van Gheem:

Following your acceptance of our proposal of December 21, 2011, we have completed this geotechnical exploration. In this report we present the results of our field exploration program and laboratory testing and our recommendations for earthwork and foundation design and construction. We are submitting three copies of this report to you. This report is the instrument of service defined in our proposal.

We have enjoyed working with you on this phase of the project. If you have questions about this report or if we can be of further assistance, please contact us.

Sincerely,

American Engineering Testing, Inc.

  
William C. Kwasny, P.E.  
Principal Engineer

  
William D. Anderson, P.E.  
Geotechnical/Materials Engineer



**Report of Preliminary Geotechnical Exploration**  
Nixon Street Industrial Site  
Little Chute, Wisconsin  
January 19, 2012  
Project No. 12-00695

AMERICAN  
ENGINEERING  
TESTING, INC.

## Signature Page

Prepared for:

Mr. Roy Van Gheem, P.E.  
Director of Public Works  
Village of Little Chute  
1940 Buchanan Street  
Little Chute, Wisconsin 54140

Prepared by:


American Engineering Testing, Inc.  
3194 Market Street, Suite C  
Green Bay, Wisconsin 54304  
(920) 347-1286/www.amengtest.com

Report Authored By:

  
William C. Kwasny, P.E.  
Principal Engineer

Review Conducted By:

  
William D. Anderson, P.E.  
Geotechnical/Materials Engineer

  
Benjamin B. Mattson, P.E.  
Geotechnical Engineer



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# Important Information about Your Geotechnical Engineering Report

*Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.*

*While you cannot eliminate all such risks, you can manage them. The following information is provided to help.*

## **Geotechnical Services Are Performed for Specific Purposes, Persons, and Projects**

Geotechnical engineers structure their services to meet the specific needs of their clients. A geotechnical engineering study conducted for a civil engineer may not fulfill the needs of a construction contractor or even another civil engineer. Because each geotechnical engineering study is unique, each geotechnical engineering report is unique, prepared *solely* for the client. No one except you should rely on your geotechnical engineering report without first conferring with the geotechnical engineer who prepared it. *And no one — not even you — should apply the report for any purpose or project except the one originally contemplated.*

## **Read the Full Report**

Serious problems have occurred because those relying on a geotechnical engineering report did not read it all. Do not rely on an executive summary. Do not read selected elements only.

## **A Geotechnical Engineering Report Is Based on A Unique Set of Project-Specific Factors**

Geotechnical engineers consider a number of unique, project-specific factors when establishing the scope of a study. Typical factors include: the client's goals, objectives, and risk management preferences; the general nature of the structure involved, its size, and configuration; the location of the structure on the site; and other planned or existing site improvements, such as access roads, parking lots, and underground utilities. Unless the geotechnical engineer who conducted the study specifically indicates otherwise, do not rely on a geotechnical engineering report that was:

- not prepared for you,
- not prepared for your project,
- not prepared for the specific site explored, or
- completed before important project changes were made.

Typical changes that can erode the reliability of an existing geotechnical engineering report include those that affect:

- the function of the proposed structure, as when it's changed from a parking garage to an office building, or from a light industrial plant to a refrigerated warehouse,

- elevation, configuration, location, orientation, or weight of the proposed structure,
- composition of the design team, or
- project ownership.

As a general rule, *always* inform your geotechnical engineer of project changes—even minor ones—and request an assessment of their impact. *Geotechnical engineers cannot accept responsibility or liability for problems that occur because their reports do not consider developments of which they were not informed.*

## **Subsurface Conditions Can Change**

A geotechnical engineering report is based on conditions that existed at the time the study was performed. *Do not rely on a geotechnical engineering report* whose adequacy may have been affected by: the passage of time; by man-made events, such as construction on or adjacent to the site; or by natural events, such as floods, earthquakes, or groundwater fluctuations. *Always* contact the geotechnical engineer before applying the report to determine if it is still reliable. A minor amount of additional testing or analysis could prevent major problems.

## **Most Geotechnical Findings Are Professional Opinions**

Site exploration identifies subsurface conditions only at those points where subsurface tests are conducted or samples are taken. Geotechnical engineers review field and laboratory data and then apply their professional judgment to render an opinion about subsurface conditions throughout the site. Actual subsurface conditions may differ—sometimes significantly—from those indicated in your report. Retaining the geotechnical engineer who developed your report to provide construction observation is the most effective method of managing the risks associated with unanticipated conditions.

## **A Report's Recommendations Are *Not* Final**

Do not overrely on the construction recommendations included in your report. *Those recommendations are not final*, because geotechnical engineers develop them principally from judgment and opinion. Geotechnical engineers can finalize their recommendations only by observing actual

subsurface conditions revealed during construction. *The geotechnical engineer who developed your report cannot assume responsibility or liability for the report's recommendations if that engineer does not perform construction observation.*

### **A Geotechnical Engineering Report Is Subject to Misinterpretation**

Other design team members' misinterpretation of geotechnical engineering reports has resulted in costly problems. Lower that risk by having your geotechnical engineer confer with appropriate members of the design team after submitting the report. Also retain your geotechnical engineer to review pertinent elements of the design team's plans and specifications. Contractors can also misinterpret a geotechnical engineering report. Reduce that risk by having your geotechnical engineer participate in prebid and preconstruction conferences, and by providing construction observation.

### **Do Not Redraw the Engineer's Logs**

Geotechnical engineers prepare final boring and testing logs based upon their interpretation of field logs and laboratory data. To prevent errors or omissions, the logs included in a geotechnical engineering report should never be redrawn for inclusion in architectural or other design drawings. Only photographic or electronic reproduction is acceptable, *but recognize that separating logs from the report can elevate risk.*

### **Give Contractors a Complete Report and Guidance**

Some owners and design professionals mistakenly believe they can make contractors liable for unanticipated subsurface conditions by limiting what they provide for bid preparation. To help prevent costly problems, give contractors the complete geotechnical engineering report, *but* preface it with a clearly written letter of transmittal. In that letter, advise contractors that the report was not prepared for purposes of bid development and that the report's accuracy is limited, encourage them to confer with the geotechnical engineer who prepared the report (a modest fee may be required) and/or to conduct additional study to obtain the specific types of information they need or prefer. A prebid conference can also be valuable. *Be sure contractors have sufficient time to perform additional study.* Only then might you be in a position to give contractors the best information available to you, while requiring them to at least share some of the financial responsibilities stemming from unanticipated conditions.

### **Read Responsibility Provisions Closely**

Some clients, design professionals, and contractors do not recognize that geotechnical engineering is far less exact than other engineering disciplines. This lack of understanding has created unrealistic expectations that

have led to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their reports. Sometimes labeled "limitations" many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks. *Read these provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

### **Geoenvironmental Concerns Are Not Covered**

The equipment, techniques, and personnel used to perform a *geoenvironmental* study differ significantly from those used to perform a *geotechnical* study. For that reason, a geotechnical engineering report does not usually relate any geoenvironmental findings, conclusions, or recommendations; e.g., about the likelihood of encountering underground storage tanks or regulated contaminants. *Unanticipated environmental problems have led to numerous project failures.* If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

### **Obtain Professional Assistance To Deal with Mold**

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the *express purpose* of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may have been addressed as part of the geotechnical engineering study whose findings are conveyed in this report, the geotechnical engineer in charge of this project is not a mold prevention consultant; ***none of the services performed in connection with the geotechnical engineer's study were designed or conducted for the purpose of mold prevention. Proper implementation of the recommendations conveyed in this report will not of itself be sufficient to prevent mold from growing in or on the structure involved.***

### **Rely on Your ASFE-Member Geotechnical Engineer for Additional Assistance**

Membership in ASFE/THE BEST PEOPLE ON EARTH exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit for everyone involved with a construction project. Confer with your ASFE-member geotechnical engineer for more information.



8811 Colesville Road/Suite G106, Silver Spring, MD 20910  
Telephone: 301/565-2733 Facsimile: 301/589-2017  
e-mail: info@asfe.org www.asfe.org

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**Report of Preliminary Geotechnical Exploration**  
Nixon Street Industrial Site  
Little Chute, Wisconsin  
January 19, 2012  
Project No. 12-00695

AMERICAN  
ENGINEERING  
TESTING, INC.

## TABLE OF CONTENTS

1.0 INTRODUCTION .....	1
2.0 SCOPE OF SERVICES .....	2
3.0 APPROPRIATE USE OF GEOTECHNICAL REPORT .....	2
4.0 AVAILABLE GEOTECHNICAL INFORMATION .....	3
5.0 SUBSURFACE EXPLORATION AND TESTING .....	4
5.1 Field Exploration Program .....	4
5.2 Laboratory Classification .....	5
6.0 SITE CONDITIONS .....	6
6.1 Surface Features/Topography/Geological History .....	6
6.2 Subsurface Conditions .....	6
6.3 Groundwater .....	7
7.0 REVIEW AND RECOMMENDATIONS .....	8
7.1 Discussion .....	8
7.2 Site Preparation .....	9
7.3 Foundation Design .....	11
7.4 Interior Floor Slab Subgrade .....	11
7.5 Exterior Slabs .....	13
7.6 Pavement Subgrades .....	13
7.7 Storm Water Disposal .....	14
8.0 CONSTRUCTION CONSIDERATIONS .....	14
8.1 Groundwater .....	14
8.2 Equipment Selection/Soil Disturbance .....	14
8.3 Winter Construction .....	15
8.4 Construction Safety .....	15
8.5 Construction Testing .....	16
9.0 GENERAL QUALIFICATIONS .....	16
10.0 ASTM STANDARDS .....	16
11.0 STANDARD OF CARE .....	17

APPENDIX A Geotechnical Field Exploration and Testing  
    Boring Log Notes  
    Unified Soil Classification System  
    Figure 1 – Boring Locations  
    Subsurface Boring Logs  
    Excavation and Refilling for Structural Support

APPENDIX B Geotechnical Report Limitations and Guidelines for Use

## **1.0 INTRODUCTION**

The Village of Little Chute (Village) has acquired a site covering about 16 acres at the intersection of Nixon Street and Elm Street. This is in an industrial area; many of the adjacent sites have already been developed. Other than an outdoor theater which had occupied the northern part of the site, no other structures are known to have existed on the parcel. The site is currently vacant, but is used by the Village for disposal of snow from street plowing operations in the winter. There are also stockpiles of various materials (soil, gravel, shredded wood) in the northern part of the site.

As of the date of this report there are no definitive plans for the types or numbers of structures that might be built on the site, nor which types of industries or tenants would occupy the buildings. For purposes of this report we have assumed that the buildings would have precast concrete perimeter bearing walls and interior steel frame systems. Based on our experience with industrial developments, we anticipate that these buildings could have wall loads as high as 6 to 8 kips per linear foot, with column loads in the range of 100 to 200 kips.

The finished floor elevations would probably be set at several feet above the adjacent streets to provide drainage away from the buildings. For purposes of this report we have assumed live floor loads that would be static (i.e., no dynamic machinery or equipment) and would not exceed 500 pounds per square foot. We have also assumed that there would be forklift traffic in the buildings.

Industrial facilities of the type under consideration would have extensive paved parking areas, with a traffic pattern ranging from automobiles/vans/pickups in employee parking lots, to semi-tractor trailers with HS-20 and HS-25 loadings in truck parking and drive areas.



## **2.0 SCOPE OF SERVICES**

Our scope of services for this preliminary geotechnical exploration is limited to the following elements:

- Stake the boring locations and clear underground utilities through Diggers Hotline;
- Drill and sample 15 borings, each to a depth of 15 feet;
- Backfill the boreholes with bentonite chips to comply with Wisconsin Administrative Code NR 141;
- Submit recovered soil samples to our laboratory for examination, routine testing, visual-manual classification, and preparation of boring logs; and
- Prepare the preliminary geotechnical report.

We prepared this preliminary report to describe the soil and groundwater conditions found in our borings; to evaluate these conditions with respect to the anticipated type of development that would occur on the site; and to present recommendations for feasible methods of earthwork, foundations and floor slab and pavement subgrade design and construction. We strongly recommend that any party who purchases all or part of the site commission a project-specific geotechnical exploration for his development. The purchaser should not rely solely on this report for final design of the facilities. In addition, our scope of services does not include any testing of the environmental conditions of the soil or groundwater, nor consultation on lead, asbestos, radon, mold or silica.

## **3.0 APPROPRIATE USE OF GEOTECHNICAL REPORT**

The purpose of this report is to provide geotechnical engineering recommendations. In the report we give a generalized overview of the soil conditions that we used in developing these recommendations. As discussed in the enclosed *ASFE Notes*, which are an integral part of this report, our report and soil boring information are not to be relied on by any parties for purposes other than geotechnical recommendations. This report is not to be used as the sole basis to

establish firm bid quantities by excavators or other parties. Variations in subsurface conditions were found to exist between the borings, and the stratification lines noted on the borings are approximate.

Bid quantity estimation by “averaging” depths and strata changes from boring logs is not permitted. Too many variations exist for such “averaging” to be valid, particularly in the topsoil thickness; the locations, depths, and types of fill and whether it contains debris; the soil types and condition; and groundwater conditions. The subsurface conditions shown on the boring logs with this report represent those at the time of drilling; these conditions can change, particularly the groundwater levels and the moisture condition of the soils.

A different scope of professional services would be required to obtain subsurface information needed for earthwork bid preparation. This scope could include additional borings, and possibly test pits. Even with this additional information, contingencies should always be carried in construction budgets to cover variations in subsurface conditions. Soil borings cannot present the same full-scale view that is obtained during complete site grading, excavation, or other aspects of earthwork construction.

#### **4.0 AVAILABLE GEOTECHNICAL INFORMATION**

Before we drilled the borings we reviewed the maps in the Outagamie County Soil Survey published by the United States Department of Agriculture Soil Conservation Service (1978). The pertinent map shows that the main naturally-occurring soil types on the site (outside of the former outdoor theater area) consist of the Poygan silty clay loam and the Grays silt loam. The map does not indicate organic soils, wetlands, swamps or marshes on the site.

The Village gave us a test report prepared by Midwest Engineering Services (MES) in 2011; the

MES field exploration consisted of three shallow test pits dug by backhoe. There was no test pit location diagram with the report, so we do not know where the pits were excavated on the site. MES described surficial fill to about 3 to 6.5 feet, overlying "peat" in one test pit. Below the fill and "peat" MES found non-organic silty clay. MES ran no laboratory tests on the soils they recovered from the test pits.

The Village also gave us a report prepared by Bates Soil & Water Testing Services, LLC, based on shallow test pits to evaluate the potential to infiltrate storm water on the site. This report describes about 4.5 to 7 feet of fill at the test pit locations, overlying silt loam, silty clay loam, and clay. This report classified the very dark brown and black soils immediately underlying the fill as silt loam, and no soils were classified as "peat." The report presented the conclusion that the site is not feasible for storm water infiltration, and would be exempt from this requirement.

## **5.0 SUBSURFACE EXPLORATION AND TESTING**

### **5.1 Field Exploration Program**

We drilled and sampled 15 borings for this project, each to a depth of 20 feet. We recommended the number, depths, and locations of the borings based on our understanding of the Village's requirements for geotechnical information and on the potential type of development on the site. We located the borings by measuring from the curb lines of the streets bordering the site; the approximate boring locations are shown on Figure 1 enclosed with this report. Before we drilled we contacted Diggers Hotline to mark public underground utility lines on the site.

We drilled the borings with a truck-mounted CME 55 rig, using hollow stem augers to advance the boreholes and sampling by the split-barrel method (ASTM: D 1586). The drill crew kept field logs noting the methods of drilling, along with the Standard Penetration values (N-values, "blows per foot"), preliminary soil classifications, and observed groundwater levels.

Representative portions of recovered soil samples were sealed in glass jars to prevent moisture loss and submitted to our laboratory. We backfilled the boreholes with bentonite chips to comply with Wisconsin Administrative Code NR 141.

## **5.2 Laboratory Classification**

The laboratory testing was initiated by a geotechnical engineer examining each of the recovered soil samples to assess the major and minor soil components, while also noting the color, degree of saturation, and lenses or seams found in the samples. The engineer visually/manually classified each of the recovered soil samples on the basis of texture and plasticity in accordance with the Unified Soil Classification System (USCS). The capital letters in parenthesis following the written soil descriptions on the boring logs are the estimated group symbols based on this system. A chart describing this classification system is included in Appendix A.

We performed moisture content tests, density tests, and hand penetrometer tests on representative samples recovered from our borings. The results of these tests are shown on the respective boring logs.

We grouped the soils by type into the strata shown on the boring logs. The stratification lines shown on the logs are approximate; *in-situ*, the transition between soil types may be gradual or abrupt in the horizontal and vertical directions.

We will retain the soil samples from this program for 60 days after the date of this report. If you wish to have the samples retained beyond this time, we ask that you please advise us; otherwise the samples will be discarded.

## **6.0 SITE CONDITIONS**

### **6.1 Surface Features/Topography/Geological History**

On the date we drilled the site was an open, relatively level parcel of land. It was apparent that the northern portion of the site had been filled. The grades were about 2 feet above street level in the northern part of the site, and rose approaching the south property line, forming a berm between the site and the property to the south. We also observed an elongated depressed area between borings 3 and 5 in which trees were growing and water was standing. A ditch traversed the site in an east-west direction south of borings 7 and 8.

In the northern third of the site (north of borings 3 and 4) we observed random piles of soil and gravel, with a pile of shredded wood just north of boring 2. The remainder of the site was covered with weeds and grasses.

The geological history of the soils below the fill is deposition as till and coarse alluvium from the late Wisconsinan glacial period.

### **6.2 Subsurface Conditions**

The soil conditions found in our borings are shown on the logs enclosed with this report. The conditions that we describe and discuss in this report are pertinent only at the borings and under the environment at the time of drilling.

In borings 1, 2, 2TB, 3, 4, and 8 we found surficial fill that extended to depths of 1 foot to 5.5 feet; the fill consisted mostly of silty clay. In borings 7, 9, 11, 12, 13, and 14 we found surficial topsoil ranging from a few inches to 2 feet thick.

In borings 2TB, 3, 4, and 8 we found buried topsoil ranging from 1 foot to 2 feet thick. In our

opinion, and based on our laboratory tests, this layer is not "peat." Because of the buried topsoil layer, we believe that the fill was not placed in a controlled manner with intent of supporting footings or floor slab. In borings 5, 6, and 10, we did not find topsoil, fill, or buried topsoil.

Below the surficial topsoil, buried topsoil, and fill (and from the ground surface in borings 5, 6, and 10), we found primarily cohesive soils, consisting of silty clay and lean clay (low plasticity soils). In some of the borings we found random interbedded layers of sandy lean clay, clayey sand, silty sand, and lean to fat clay. The cohesive soils had consistencies (unconfined compressive strengths) ranging from 0.5 tons per square foot (soft) to greater than 4 tons per square foot (hard). In most of the borings the consistency decreased with depth. The cohesive soils are stiffer near the surface, probably due to desiccation (drying) since the time of deposition over 25,000 years ago.

### **6.3 Groundwater**

We did not encounter free groundwater in any of our borings, while drilling or after drilling. However, the soils we found are of low permeability, and an extended period of time, on the order of days or weeks, would be required for the groundwater to reach equilibrium in open boreholes. We are not allowed to leave boreholes open for such periods, for safety and environmental considerations. Further, boreholes left open for long periods will cave in, which can cause misleading water level readings.

In order to define the groundwater tables on this site (hydrostatic and/or perched) it would be necessary to install and read temporary piezometers (monitoring wells), and this was not in our scope of services. If a party purchasing this site plans to have below-grade levels in a building (e.g., basements or equipment pits), we strongly recommend that they include piezometers in their project-specific boring program so that their design accounts for groundwater.

## 7.0 REVIEW AND RECOMMENDATIONS

### 7.1 Discussion

The soil conditions on this site are such that conventional spread footing foundations will be feasible for industrial structures, but certain issues must be dealt with, and there will be limitations in using some parts of the site, depending on the actual structural loads that will be developed. First, in those portions of the site where there is fill and buried topsoil, soil correction must be carried out under building footprints, to remove the fill and buried topsoil to a suitable subgrade, followed by placement of compacted fill to form a building pad. In those portions of the site where there is no fill, but where there is surficial topsoil, the topsoil must be stripped from under the building footprint before new compacted fill is placed.

The shear strength and compressibility of the naturally-occurring soils are more favorable in some parts of the site, and higher bearing pressures, consistent with acceptable settlements, can be used in these areas. In our opinion, it is the potential settlement that will limit what types of buildings and/or what intensity of live floor loads can be used in certain parts of this site. The cause of this is the **decreasing** stiffness and **increasing** compressibility of the clayey soils in some parts of the site. For buildings that would have column and wall loads that allow footing designs that do not stress the deeper, lower consistency soils (e.g., footings less than about 5 feet wide), acceptable building settlements, typically taken as 1 inch or less, would result because the stress would be carried in the desiccated zone. However, with heavier loads that require larger footings, applying stress deeper into the soil, excessive settlement is a possibility, and such buildings would require soil improvement, such as the installation of Geopiers, in order to use footing foundations. In our opinion, driven piles or drilled piers (caissons) would not be required.

Floor loads in industrial buildings commonly cover large areas, thus imparting stress deeper into the soil. Heavy floor loads on this site, such as those in excess of about 500 pounds per square

foot, can result in excessive slab settlement and cracking, and can even cause column or wall settlement if the floor loads are placed too close to these elements. This could also be the case with dynamic machinery or equipment loads on the slabs. With respect to floor slab subgrade preparation, we recommend the use of crushed rock as the final leveling course, to provide better performance of joints under fork lift traffic.

For pavements on this site, it may not be necessary to carry out soil correction where the buried topsoil was found, depending on the risk preference of the facility owner. We recommend that all surface debris such as shredded wood, as well as all vegetation, including the root mat and all surficial topsoil, be stripped from areas where pavements are to be built.

## **7.2 Site Preparation**

In this section we present general recommendations for site preparation. The final methods that should be used will depend on the type and design of the building that is planned.

All surficial topsoil and vegetation should be stripped and all existing fill and buried topsoil should be undercut. None of these materials would be suitable for reuse as compacted fill under buildings or parking lots. We strongly recommend that estimates of soil correction and undercut depths not be determined by straight-line interpolation between our borings. The information from our borings should only be used for **preliminary** estimates of earthwork; final calculations should be based on project-specific borings that are drilled for a defined structure.

The contractor must be careful when removing the fill and surficial/buried topsoil, to avoid disturbing the base soils. Any base soils that are disturbed should be removed and replaced with select compacted fill.



**Report of Preliminary Geotechnical Exploration**

Nixon Street Industrial Site

Little Chute, Wisconsin

January 19, 2012

Project No. 12-00695

AMERICAN  
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We recommend that the soil used to prepare building pads on this site be a select granular soil meeting the gradation of WisDOT 209, Grade 1 or 2. This sand should be placed on a base of stiff to hard undisturbed naturally-occurring clay in loose lifts no thicker than 8 inches, with each lift mechanically compacted to at least 95% of the maximum Modified Proctor dry density (ASTM: D 1557) before the next lift is placed. The lateral fill zone below all foundations should at least be equal to the vertical depth of fill needed to attain foundation grade at that location (i.e., 1:1 lateral oversize).

In areas that are to be paved, we recommend using lean clay or sandy lean clay as the fill to build the subgrade. This fill should be placed in loose lifts no thicker than 6 inches, at a moisture content within 2% above or below the optimum moisture content as determined by the Standard Proctor test (ASTM: D 698). Each lift should be compacted to at least 98% of the maximum Standard Proctor dry density. We recommend that the final 12 inches of subgrade in all paved areas intended to carry truck traffic consist of granular soil meeting the gradation of WisDOT 209 Grade 1.

The sidewall slopes of all excavations on this project must comply with OSHA regulations. It is our opinion that the soils on the site should be classified as OSHA Type C, but the final decision of the OSHA type of soil should be made by the earthworks contractor's "competent person." For design and estimating purposes, we recommend that the side walls of the excavations be planned at a slope no steeper than 1.5 units horizontal to 1 unit vertical (1.5H:1V).

For additional recommendations on backfill placement and compaction below foundations, please refer to the standard sheet in Appendix A of this report entitled "Excavation and Refilling for Structural Support."

### **7.3 Foundation Design**

After the site has been prepared as described above, the buildings may be supported on spread footing foundations. We recommend that the bottom of perimeter footings for heated buildings bear at least 4 feet below final outside grade for protection from frost penetration. Interior footings in heated areas would typically bear about 18 to 24 inches below top of finished floor, depending on the footing thickness. Exterior footings for structures away from the building, such as canopy columns or screen walls, should bear at least 6 feet below final grade, because deeper frost penetration can occur in open areas, especially if they are kept free of snow.

We anticipate that these footings would bear on stiff to hard clay, or on compacted fill placed over a suitable subgrade. For preliminary design, we recommend using a maximum net allowable soil bearing pressure ranging from 2,000 to 3,000 pounds per square foot. This refers to the bearing pressure applied to the soil in excess of the pressure from the surrounding depth of overburden. The actual design bearing pressure should be selected only after a project-specific geotechnical exploration has been carried for each building planned on the site.

The estimated total settlement of buildings designed using the recommended bearing pressure would be 1 inch or less if the footings do not excessively stress the deeper, lower consistency clays. If it is determined that this application of deeper stress would occur, and the soils at that location are excessively compressible, then Geopiers should be considered.

### **7.4 Interior Floor Slab Subgrade**

The recommendations given in this section apply only for live floor loads less than 500 pounds per square foot. If larger floor loads or dynamic loads must be considered, then a special analysis would be required after project-specific borings are drilled; such a program should include laboratory consolidation tests so the performance of heavy floor loads could be analyzed.

**Report of Preliminary Geotechnical Exploration**

Nixon Street Industrial Site

Little Chute, Wisconsin

January 19, 2012

Project No. 12-00695

AMERICAN  
ENGINEERING  
TESTING, INC.

We recommend that all underslab utility trenches and all footing trenches/excavations be backfilled with imported granular soil, for relative ease of compaction in narrow, confined spaces. The excavated clay should not be used for trench backfill. The backfill should be placed in loose lifts about 4 to 6 inches thick, with each lift mechanically compacted using manually-operated impact or vibratory equipment, to at least 95% of the maximum modified Proctor dry density.

With a subgrade prepared as described, we recommend that the structural engineer use a modulus of subgrade reaction of 175 pounds per cubic inch for slab design.

We recommend that the final 6 to 8 inches of leveling course under all slabs in non-office areas of the buildings on this site consist of 100% crushed rock meeting the gradation of WisDOT 305,  $\frac{3}{4}$  inch or 1-1/4 dense-graded base. This material will lock together and provide better resistance to movement at joints under the action of forklift trucks. The structural engineer designing the slabs should assess the need for placing dowels at slab joints to provide positive shear transfer.

We recommend placement of a vapor retarder under the slabs of the buildings on this site, because of the clayey soils. The purpose of a vapor retarder is to reduce the potential for the upward migration of water vapor from the soil, into and through the concrete. When the vapor condenses on the slab surface, it can damage floor coverings such as tile, carpeting, or wood, or floor coatings or sealers. Methods of vapor retarder design are given in Part 2, section 302 of the American Concrete Institute *Manual of Concrete Practice*.

The floor slabs on-grade should have control joints and construction joints at spacings recommended by the Portland Cement Association and the American Concrete Institute. The slabs should be cast independent of the perimeter foundation walls of the buildings.

### **7.5 Exterior Slabs**

We recommend that special subgrade soils be placed under exterior entry slabs at doorways, garage door aprons, and sidewalks that abut the buildings, rather than casting these slabs on the silty or clayey soils. The silty and clayey soils can heave when they freeze each winter, raising the overlying slabs and possibly jamming doors or damaging the buildings.

The soil placed as the subgrade to a depth of at least 4 feet below the bottom of slabs and 2 feet beyond the edges of slabs should be a select, free-draining, non-frost susceptible sand. This can be a well-graded sand or sand-gravel mixture having less than 5% passing the No. 200 sieve. This non-frost susceptible (NFS) fill should be compacted to at least 95% of the maximum Modified Proctor dry density.

We recommend placing drain pipes at the base of the NFS fill zones to remove water that infiltrates from the surface. These pipes should be connected to the site storm sewer system.

### **7.6 Pavement Subgrades**

We have described in a previous section of this report our recommendations for preparation of the subgrade for pavements on this site.

If the owner decides to not undercut and replace the areas with buried topsoil, then we recommend that the civil engineer who designs the pavements for this condition use a California Bearing ratio of 3, along with his defined traffic pattern and the owner's desired pavement life, to select the pavement section.

In areas where soil correction is carried out, and in areas where there is no fill but the topsoil is stripped, and where a 1-foot subbase of select sand is placed, we recommend that the civil

engineer use a CBR of 6 for his design.

### **7.7 Storm Water Disposal**

Based on our borings, we concur with Bates Soil & Water Testing Services LLC that infiltration on this site is not feasible.

## **8.0 CONSTRUCTION CONSIDERATIONS**

### **8.1 Groundwater**

Based on the conditions found in our borings, it is our opinion that hydrostatic groundwater would not adversely affect the design or construction of buildings without below-grade levels on this site. We have discussed earlier the installation and reading of piezometers in project-specific borings for buildings that would have below grade levels. The analysis of conditions for these structures should be based on the conditions that are found.

If any water seeps into excavation from perched water layers, or collects from precipitation or runoff, it should be promptly pumped out. The contractor should not permit water to stand ponded on the clayey soils since it would soften and disturb these soils. Further, the contractor should not be permitted to place fill or concrete into standing water or over softened soils in an attempt to displace these materials. This method can trap softened soils under the buildings or pavement, causing excess post-construction settlement even if the softened zone is only a few inches thick.

### **8.2 Equipment Selection/Soil Disturbance**

The soil types at this site can be easily disturbed by construction equipment, especially when the soils are saturated or during freeze/thaw conditions. It is the earthwork contractor's responsibility to choose equipment and work procedures that will not disturb the subgrade soils. The contractor

**Report of Preliminary Geotechnical Exploration**

Nixon Street Industrial Site

Little Chute, Wisconsin

January 19, 2012

Project No. 12-00695

AMERICAN  
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should also route construction traffic away from prepared foundation soils and areas of pavements and slabs, to avoid soil disturbance.

If the equipment the contractor selects causes disturbance of the soils, it is the contractor's responsibility to switch to other types of equipment and/or earthwork methods. The responsibility to properly select construction equipment to avoid disturbing the soils on this site lies solely with the contractor. A note to this effect should be included in the project specifications.

### **8.3 Winter Construction**

Only unfrozen fill and backfill should be used, and contractors may charge extra for importing unfrozen soil or keeping soil from freezing. Placement of fill and/or foundation concrete must **not** be permitted on frozen soil, nor should bearing soils under grade beams or slabs be allowed to freeze after concrete is placed, because excessive post-construction settlement could occur as the frozen soils thaw. We strongly recommend that the issue of winter construction be discussed at a pre-construction meeting, and that the general contractor and subcontractors be required to submit their plans for winter construction in writing.

### **8.4 Construction Safety**

All excavations on this project must comply with the requirements of OSHA 29 CFR, Part 1926, Subpart P, "Excavations and Trenches." This document states that excavation safety is solely the responsibility of the contractor; the decisions regarding safe slopes on the project are to be made by the contractor's "competent person." Reference to this OSHA requirement should be included in the job specifications. The responsibility to provide safe working conditions on the site, for earthwork, building construction, or any associated operations, is not borne in any manner by American Engineering Testing, Inc.

### **8.5 Construction Testing**

The recommendations in this report are based on the subsurface conditions found at our test boring locations. Since soil conditions vary among the boring locations, we recommend that the owner retain the services of a geotechnical/material engineering firm to provide observation and testing during construction, including foundations soils observations and backfill compaction testing, as well as testing of concrete, structural steel, and masonry. We welcome the opportunity to provide the observation and testing services for this project.

### **9.0 GENERAL QUALIFICATIONS**

We have prepared this preliminary report based on 15 widely-spaced borings and on certain assumptions regarding the types of structures that might be built on this site. We strongly recommend that any party who purchases all or part of the site have a project-specific geotechnical exploration carried out at the location of his building or buildings. This preliminary report is not intended to be used for final design of earthwork, foundations, slabs or pavements for this site.

We determined the soil and groundwater conditions at 15 locations on this site. Significant variations in the soil conditions were found, and it is likely that additional variations exist that could not be determined from our borings or our site reconnaissance. These variations would not become apparent until further borings are drilled and until excavation is started. No warranty, express or implied, is presented with respect to the soils and groundwater conditions on this site.

### **10.0 ASTM STANDARDS**

When we refer to an ASTM Standard in this report, we mean that our services were performed in general accordance with that standard. Compliance with any other standards referenced within the specified standard is neither inferred nor implied.


**Report of Preliminary Geotechnical Exploration**  
Nixon Street Industrial Site  
Little Chute, Wisconsin  
January 19, 2012  
Project No. 12-00695

AMERICAN  
ENGINEERING  
TESTING, INC.

### 11.0 STANDARD OF CARE

We have endeavored to provide our engineering services for this project in accordance with the local standard of practice for geotechnical and material engineers. Other than this, no warranty, express or implied, is intended.

Report Authored By:

  
William C. Kwasny, P.E.  
Principal Engineer

Review Conducted By:

  
William D. Anderson, P.E.  
Geotechnical/Materials Engineer

  
Benjamin B. Mattson, P.E.  
Geotechnical Engineer





**Report of Preliminary Geotechnical Exploration**

Nixon Street Industrial Site

Little Chute, Wisconsin

January 19, 2012

Project No. 12-00695

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## **Appendix A**

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AET Project No. 12-00695

Geotechnical Field Exploration and Testing  
Boring Log Notes  
Unified Soil Classification System  
Figure 1 – Boring Locations  
Subsurface Boring Logs  
Excavation and Refilling for Structural Support

## **Appendix A**

### **Geotechnical Field Exploration and Testing**

#### **AET Project No. 12-00695**

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#### **A.1 FIELD EXPLORATION**

The subsurface conditions at the site were explored by drilling and sampling fifteen (15) standard penetration test borings. The locations of the borings appear on Figure 1 preceding the Subsurface Boring Logs in Appendix A.

#### **A.2 SAMPLING METHODS**

##### **A.2.1 Split-Spoon Samples (SS)**

Standard penetration (split-spoon) samples were collected in general accordance with ASTM: D1586. The ASTM test method consists of driving a 2-inch O.D. split-barrel sampler into the in-situ soil with a 140-pound hammer dropped from a height of 30 inches. The sampler is driven a total of 18 or 24 inches into the soil. After an initial set of 6 inches, the number of hammer blows to drive the sampler the next 12 inches is known as the standard penetration resistance or N-value.

##### **A.2.2 Disturbed Samples (DS)/Spin-up Samples (SU)**

Sample types described as "DS" or "SU" on the boring logs are disturbed samples, which are taken from the flights of the auger. Because the auger disturbs the samples, possible soil layering and contact depths should be considered approximate.

##### **A.2.3 Sampling Limitations**

Unless actually observed in a sample, contacts between soil layers are estimated based on the spacing of samples and the action of drilling tools. Cobbles, boulders, and other large objects generally cannot be recovered from test borings, and they may be present in the ground even if they are not noted on the boring logs.

Determining the thickness of "topsoil" layers is usually limited, due to variations in topsoil definition, sample recovery, and other factors. Visual-manual description often relies on color for determination, and transitioning changes can account for significant variation in thickness judgment. Accordingly, the topsoil thickness presented on the logs should not be the sole basis for calculating topsoil stripping depths and volumes. If more accurate information is needed relating to thickness and topsoil quality definition, alternate methods of sample retrieval and testing should be employed.

#### **A.3 CLASSIFICATION METHODS**

Soil descriptions shown on the boring logs are based on the Unified Soil Classification System (USCS). The USCS is described in ASTM: D2487 and D2488. Where laboratory classification tests (sieve analysis or Atterberg Limits) have been performed, accurate classifications per ASTM: D2487 are possible. Otherwise, soil descriptions shown on the boring logs are visual-manual judgments. Charts are attached which provide information on the USCS, the descriptive terminology, and the symbols used on the boring logs.

The boring logs include descriptions of apparent geology. The geologic depositional origin of each soil layer is interpreted primarily by observation of the soil samples, which can be limited. Observations of the surrounding topography, vegetation, and development can sometimes aid this judgment.

#### **A.4 WATER LEVEL MEASUREMENTS**

The ground water level measurements are shown at the bottom of the boring logs. The following information appears under "Water Level Measurements" on the logs:

- Date and Time of measurement
- Sampled Depth: lowest depth of soil sampling at the time of measurement
- Casing Depth: depth to bottom of casing or hollow-stem auger at time of measurement
- Cave-in Depth: depth at which measuring tape stops in the borehole
- Water Level: depth in the borehole where free water is encountered
- Drilling Fluid Level: same as Water Level, except that the liquid in the borehole is drilling fluid

The true location of the water table at the boring locations may be different than the water levels measured in the boreholes. This is possible because there are several factors that can affect the water level measurements in the borehole. Some of these factors include: permeability of each soil layer in profile, presence of perched water, amount of time between water level readings, presence of drilling fluid, weather conditions, and use of borehole casing.

**Appendix A**  
**Geotechnical Field Exploration and Testing**  
**AET Project No. 12-00695**

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**A.5 TEST STANDARD LIMITATIONS**

Field and laboratory testing is done in general conformance with the described procedures. Compliance with any other standards referenced within the specified standard is neither inferred nor implied.

**A.6 SAMPLE STORAGE**

Unless notified to do otherwise, we routinely retain representative samples of the soils recovered from the borings for a period of 30 days.

## BORING LOG NOTES

### DRILLING AND SAMPLING SYMBOLS

Symbol	Definition
B, H, N:	Size of flush-joint casing
CA:	Crew Assistant (initials)
CAS:	Pipe casing, number indicates nominal diameter in inches
CC:	Crew Chief (initials)
COT:	Clean-out tube
DC:	Drive casing; number indicates diameter in inches
DM:	Drilling mud or bentonite slurry
DR:	Driller (initials)
DS:	Disturbed sample from auger flights
FA:	Flight auger; number indicates outside diameter in inches
HA:	Hand auger; number indicates outside diameter
HSA:	Hollow stem auger; number indicates inside diameter in inches
LG:	Field logger (initials)
MC:	Column used to describe moisture condition of samples and for the ground water level symbols
N (BPF):	Standard penetration resistance (N-value) in blows per foot (see notes)
NQ:	NQ wireline core barrel
PQ:	PQ wireline core barrel
RD:	Rotary drilling with fluid and roller or drag bit
REC:	In split-spoon (see notes) and thin-walled tube sampling, the recovered length (in inches) of sample. In rock coring, the length of core recovered (expressed as percent of the total core run). Zero indicates no sample recovered.
REV:	Revert drilling fluid
SS:	Standard split-spoon sampler (steel; 1d" is inside diameter; 2" outside diameter); unless indicated otherwise
SU:	Spin-up sample from hollow stem auger
TW:	Thin-walled tube; number indicates inside diameter in inches
WASH:	Sample of material obtained by screening returning rotary drilling fluid or by which has collected inside the borehole after "falling" through drilling fluid
WH:	Sampler advanced by static weight of drill rod and 140-pound hammer
WR:	Sampler advanced by static weight of drill rod
94mm:	94 millimeter wireline core barrel
▼:	Water level directly measured in boring
▽:	Estimated water level based solely on sample appearance

### TEST SYMBOLS

Symbol	Definition
CONS:	One-dimensional consolidation test
DEN:	Dry density, pcf
DST:	Direct shear test
E:	Pressuremeter Modulus, tsf
HYD:	Hydrometer analysis
LL:	Liquid Limit, %
LP:	Pressuremeter Limit Pressure, tsf
OC:	Organic Content, %
PERM:	Coefficient of permeability (K) test; F - Field; L - Laboratory
PL:	Plastic Limit, %
q <sub>p</sub> :	Pocket Penetrometer strength, tsf ( <u>approximate</u> )
q <sub>c</sub> :	Static cone bearing pressure, tsf
q <sub>u</sub> :	Unconfined compressive strength, psf
R:	Electrical Resistivity, ohm-cms
RQD:	Rock Quality Designation of Rock Core, in percent (aggregate length of core pieces 4" or more in length as a percent of total core run)
SA:	Sieve analysis
TRX:	Triaxial compression test
VSR:	Vane shear strength, remolded (field), psf
VSU:	Vane shear strength, undisturbed (field), psf
WC:	Water content, as percent of dry weight
%-200:	Percent of material finer than #200 sieve

### STANDARD PENETRATION TEST NOTES

The standard penetration test consists of driving the sampler with a 140 pound hammer and counting the number of blows applied in each of three 6" increments of penetration. If the sampler is driven less than 18" (usually in highly resistant material), permitted in ASTM: D1586, the blows for each complete 6" increment and for each partial increment is on the boring log. For partial increments, the number of blows is shown to the nearest 0.1 below the slash.

The length of sample recovered, as shown on the "REC" column, may be greater than the distance indicated in the N column. The disparity is because the N-value is recorded below the initial 6" set (unless partial penetration defined in ASTM: D1586 is encountered) whereas the length of sample recovered is for the entire sampler drive (which may even extend more than 18").

# **UNIFIED SOIL CLASSIFICATION SYSTEM** **ASTM Designations: D 2487, D2488**

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Criteria for Assigning Group Symbols and Group Names Using Laboratory Tests<sup>A</sup>

Soil Classification

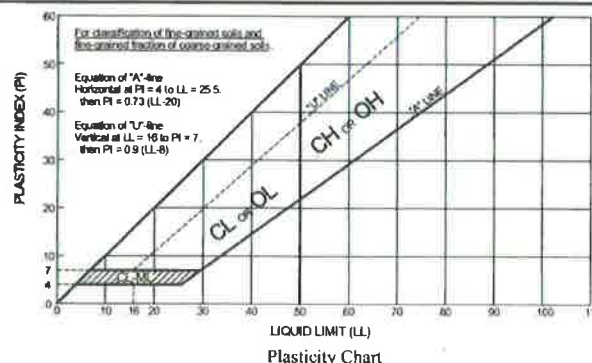
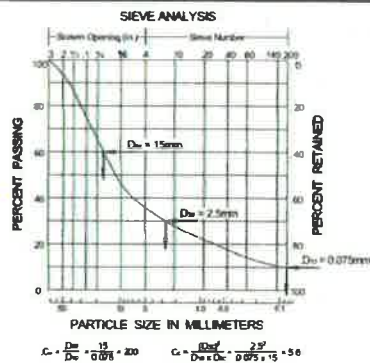
Group Symbol      Group Name<sup>B</sup>

Coarse-Grained Soils More than 50% retained on No. 200 sieve	Gravels More than 50% coarse fraction retained on No. 4 sieve	Clean Gravels Less than 5% fines <sup>C</sup>	$Cu \geq 4$ and $1 \leq Cc \leq 3^H$	GW	Well graded gravel <sup>I</sup>	
			$Cu < 4$ and/or $1 > Cc > 3^I$	GP	Poorly graded gravel <sup>I</sup>	
		Gravels with Fines more than 12% fines <sup>C</sup>	Fines classify as ML or MH	GM	Silty gravel <sup>I, G, H</sup>	
			Fines classify as CL or CH	GC	Clayey gravel <sup>I, G, H</sup>	
	Sands 50% or more of coarse fraction passes No. 4 sieve	Clean Sands Less than 5% fines <sup>D</sup>	$Cu \geq 6$ and $1 \leq Cc \leq 3^H$	SW	Well-graded sand <sup>I</sup>	
			$Cu < 6$ and $1 > Cc > 3^I$	SP	Poorly-graded sand <sup>I</sup>	
		Sands with Fines more than 12% fines <sup>D</sup>	Fines classify as ML or MH	SM	Silty sand <sup>I, G, H</sup>	
			Fines classify as CL or CH	SC	Clayey sand <sup>I, G, H</sup>	
	Fine-Grained Soils 50% or more passes the No. 200 sieve  (see Plasticity Chart below)	Silt and Clays Liquid limit less than 50	inorganic	PI > 7 and plots on or above "A" line <sup>I</sup>	CL	Lean clay <sup>K, L, M</sup>
				PI < 4 or plots below "A" line <sup>I</sup>	ML	Silt <sup>K, L, M</sup>
			organic	<u>Liquid limit – oven dried</u> < 0.75 Liquid limit – not dried	OL	Organic clay <sup>K, L, M, N</sup> Organic silt <sup>K, L, M, O</sup>
Silt and Clays Liquid limit 50 or more		inorganic	PI plots on or above "A" line	CH	Fat clay <sup>K, L, M</sup>	
			PI plots below "A" line	MH	Elastic silt <sup>K, L, M</sup>	
		organic	<u>Liquid limit – oven dried</u> < 0.75 Liquid limit – not dried	OH	Organic clay <sup>K, L, M, P</sup> Organic silt <sup>K, L, M, Q</sup>	
Highly organic soil			Primarily organic matter, dark in color, and organic in odor	PT	Peat <sup>R</sup>	

**Notes**  
<sup>A</sup>Based on the material passing the 3-in (75-mm) sieve.  
<sup>B</sup>If field sample contained cobbles or boulders, or both, add "with cobbles or boulders, or both" to group name.  
<sup>C</sup>Gravels with 5 to 12% fines require dual symbols:  
 GW-GM well-graded gravel with silt  
 GW-GC well-graded gravel with clay  
 GP-GM poorly graded gravel with silt  
 GP-GC poorly graded gravel with clay  
<sup>D</sup>Sands with 5 to 12% fines require dual symbols:  
 SW-SM well-graded sand with silt  
 SW-SC well-graded sand with clay  
 SP-SM poorly graded sand with silt  
 SP-SC poorly graded sand with clay

$$C_u = D_{60} / D_{10}, \quad C_c = \frac{(D_{30})^2}{D_{10} \times D_{60}}$$

<sup>F</sup>If soil contains  $\geq 15\%$  sand, add "with sand" to group name.  
<sup>G</sup>If fines classify as CL-ML, use dual symbol GC-GM, or SC-SM.  
<sup>H</sup>If fines are organic, add "with organic fines" to group name.  
<sup>I</sup>If soil contains  $\geq 15\%$  gravel, add "with gravel" to group name.  
<sup>J</sup>If Atterberg limits plot is hatched area, soils is a CL-ML silty clay.  
<sup>K</sup>If soil contains 15 to 29% plus No. 200 add "with sand" or "with gravel", whichever is predominant.  
<sup>L</sup>If soil contains  $\geq 30\%$  plus No. 200, predominantly sand, add "sandy" to group name.  
<sup>M</sup>If soil contains  $\geq 30\%$  plus No. 200, predominantly gravel, add "gravelly" to group name.  
<sup>N</sup>PI  $\geq 4$  and plots on or above "A" line.  
<sup>O</sup>PI  $< 4$  or plots below "A" line.  
<sup>P</sup>PI plots on or above "A" line.  
<sup>Q</sup>PI plots below "A" line.  
<sup>R</sup>Fiber Content description shown below.



## **ADDITIONAL TERMINOLOGY NOTES USED BY AET FOR SOIL IDENTIFICATION AND DESCRIPTION**

Grain Size		Gravel Percentages		Consistency of Plastic Soils		Relative Density of Non-Plastic Soils	
Term	Particle Size	Term	Percent	Term	N-Value, BPF	Term	N-Value, BPF
Boulders	Over 12"	A Little Gravel	3% - 14%	Very Soft	less than 2	Very Loose	0 - 4
Cobbles	3" to 12"	With Gravel	15% - 29%	Soft	2 - 4	Loose	5 - 10
Gravel	#4 sieve to 3"	Gravelly	30% - 50%	Firm	5 - 8	Medium Dense	11 - 30
Sand	#200 to #4 sieve			Stiff	9 - 15	Dense	31 - 50
Fines (silt & clay)	Pass #200 sieve			Very Stiff	16 - 30	Very Dense	Greater than 50
Moisture/Frost Condition (MC Column)		Layering Notes		Peat Description		Organic Description (if no lab tests)	
D (Dry):	Absence of moisture, dusty, dry to touch.	Laminations:	Layers less than 1/4" thick of differing material or color.	Term	Fiber Content (Visual Estimate)	Soils are described as <u>organic</u> , if soil is not peat and is judged to have sufficient organic fines content to influence the Liquid Limit properties. <u>Slightly organic</u> used for borderline cases.	
M (Moist):	Damp, although free water not visible. Soil may still have a high water content (over "optimum").	Lenses:	Pockets or layers greater than 1/4" thick of differing material or color.	Fibric Peat:	Greater than 67%	<u>Root Inclusions</u>	
W (Wet/ Waterbearing):	Free water visible intended to describe non-plastic soils. Waterbearing usually relates to sands and sand with silt.			Hemic Peat:	33 - 67%	With roots: Judged to have sufficient quantity of roots to influence the soil properties.	
F (Frozen):	Soil frozen			Sapric Peat:	Less than 33%	Trace roots: Small roots present, but not judged to be in sufficient quantity to significantly affect soil properties.	

## Village of Little Chute



The Village of Little Chute does not guarantee this information to be correct, current or complete. The maps are intended for use as a general reference and are not intended or suitable for site-specific or financial decisions. Any use to the contrary of the above stated uses is the responsibility of the user and such use is at the user's own risk. In no event shall the Village of Little Chute become liable to users of these maps for any loss arising from the use of these maps.





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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-1 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	FILL, silty clay, a little gravel, brown, frozen to about 1 foot then stiff (CL-ML)	FILL	31	F	SS	12	12				
2											
3			14	M	SS	12	20				1.5
4	SILT, dark brown, moist, medium dense (ML)	TILL									
5			13	M	SS	12	27				3.5
6											
7	LEAN CLAY, brown, stiff (CL)		14	M	SS	12	25	106			3.5
8	CLAYEY SAND, brown, moist, loose (SC)										
9			8	M	SS	12	18				
10											
11	LEAN CLAY, brown, firm (CL)		9	M	SS	12	24				1.5
12											
13			8	M	SS	14	25				3.8
14	SILTY SAND, fine grained, brown, wet, loose (SM)										
15			7	M	SS	19	20				
16	LEAN CLAY, brown, stiff to firm (CL)										
17			10	M	SS	20	19				0.8
18											
19			5	M	SS	20	20				0.5
20											
	End of boring at 20 feet										
DEPTH: DRILLING METHOD		WATER LEVEL MEASUREMENTS							NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG		
0-18 3.25" HSA		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL	WATER LEVEL			
		1/5/12		20.0	18.0	20.0	None	None			
BORING COMPLETED: 1/5/12											
DR: LG: Rig: GDC											

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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-2 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	FILL, silty clay, a little organics, brown, frozen to about 1 foot then very stiff (CL-ML)	FILL	17	F	SS	12	19				3.5
2	SILTY CLAY, brown, very stiff to stiff (CL-ML)	TILL									
3			16	M	SS	12	21				3.5
4											
5			10	M	SS	12	18				2.0
6	LEAN CLAY, brown, stiff to firm (CL)										
7			10	M	SS	12	36				1.3
8											
9			11	M	SS	12	20				3.5
10											
11			8	M	SS	12	20				0.8
12											
13			6	M	SS	12	22				0.8
14											
15			4	M	SS	12	21				0.5
16											
17			7	M	SS	12	21				0.8
18											
19			4	M	SS	12	21				0.5
20											
	End of boring at 20 feet										
DEPTH: DRILLING METHOD		WATER LEVEL MEASUREMENTS							NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG		
0-18 3.25" HSA		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL	WATER LEVEL			
		1/5/12		20.0	18.0	20.0	None	None			
BORING COMPLETED: 1/5/12											
DR: LG: Rig: GDC											


















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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-2TB (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	FILL, silty clay, brown, frozen to about 1 foot then very stiff to stiff (CL-ML)		23	F		12	14				2.3
2											
3			18	M		12	15				3.8
4											
5	SILT with organics, dark brown to black, moist, medium dense (ML to OL)		14	M		12	16				3.5
6	LEAN CLAY, brown, very stiff to firm (CL)			18	M		12	17			
7											
8											
9	-- becomes lean to fat clay (CL-CH) from 8 to 10 feet	5		M		12	35				
10		6		M		12	30				1.5
11											
12		7		M		12	34				
13	-- becomes lean to fat clay (CL-CH) from 12 to 14 feet	6		M		12	40				1.3
14		6		M		12	20				0.8
15											
16		6		M		12	20				1.0
17											
18											
19											
20	End of boring at 20 feet										

DEPTH: DRILLING METHOD		WATER LEVEL MEASUREMENTS							NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG
0-18	3.25" HSA	DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL	WATER LEVEL	
		1/5/12		20.0	18.0	20.0	None	None	
BORING COMPLETED: 1/5/12									
DR:	LG:	Rig: GDC							



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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-3 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	FILL, silty sand with gravel, fine to medium grained, brown, frozen to moist (SM)	FILL	50/4	F	SS	4	4				
2	FILL, silty clay, brown, stiff to very stiff (CL-ML)										
3			15	M	SS	12	13			4.3	
4											
5			21	M	SS	12	18				4.0
6	SILT, a little organics, black, wet, medium dense to loose (ML to OL)	BURIED TOPSOIL									
7			10	M	SS	16	20				2.0
8	LEAN CLAY, brown, stiff to firm (CL)	TILL									
9			5	M	SS	20	29			1.0	
10											
11			4	M	SS	20	31			1.0	
12											
13			8	M	SS	12	33				
14											
15	-- becomes lean to fat clay (CL-CH) from 14 to 16 feet		8	M	SS	22	34	90		2.0	
16											
17			8	M	SS	23	20				
18											
19			7	M	SS	20	20				
20	End of boring at 20 feet										

DEPTH: DRILLING METHOD		WATER LEVEL MEASUREMENTS						NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG	
		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL		WATER LEVEL
0-18	3.25" HSA	1/5/12		20.0	18.0	20.0	None		None
BORING COMPLETED: 1/5/12									
DR:	LG: Rig: GDC								



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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-4 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	FILL, silty clay, brown, frozen to about 1 foot then very stiff to stiff (CL-ML)	FILL	44	F	SS	12	16				2.0
2											
3			20	M	SS	12	14				4.5
4											
5	SILT, a little organics, black, moist, loose (ML to OL)	BURIED TOPSOIL	10	M	SS	12	14				4.5
6	LEAN CLAY, brown, stiff to firm (CL)  -- becomes lean to fat clay (CL-CH) from 10 to 12 feet        -- becomes lean to fat clay (CL-CH) from 16 to 20 feet	TILL									
7			10	M	SS	12	24				2.0
8											
9			6	M	SS	12	28				1.8
10											
11			8	M	SS	12	31				1.5
12											
13			7	M	SS	12	14				3.5
14											
15			7	M	SS	12	28				1.5
16											
17			6	M	SS	12	36				2.0
18											
19			7	M	SS	12	29				1.3
20											
	End of boring at 20 feet										
DEPTH: DRILLING METHOD		WATER LEVEL MEASUREMENTS							NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG		
0-18 3.25" HSA		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL	WATER LEVEL			
		1/5/12		20.0	18.0	20.0	None	None			
BORING COMPLETED: 1/5/12											
DR: LG: Rig: GDC											

06/04



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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-5 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	LEAN CLAY, brown, frozen to about 1 foot then stiff to firm (CL)  -- with gravel from 4 to 6 feet	TILL	10	F	SS	12	14				3.3
2											
3			8	M	SS	12	19				1.5
4											
5			13	M	SS	12	11				4.5
6											
7			11	M	SS	12	17				2.5
8											
9			10	M	SS	12	27	97			2.5
10											
11	9	M	SS	12	15				2.5		
12											
13	7	M	SS	12	21						
14											
15	6	M	SS	12	19				0.8		
16											
17	10	M	SS	12	25				1.5		
18											
19	9	M	SS	12	20						
20	End of boring at 20 feet										

DEPTH:	DRILLING METHOD	WATER LEVEL MEASUREMENTS						NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG	
		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL		WATER LEVEL
0-18	3.25" HSA	1/5/12		20.0	18.0	20.0	None		None
BORING COMPLETED: 1/5/12									
DR: LG: Rig: GDC									



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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-6 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC. IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	LEAN CLAY, brown, frozen to about 1 foot then stiff to firm (CL)	TILL	12	F	SS	12	15				1.5
2											
3			8	M	SS	12	15				4.0
4											
5			8	M	SS	12	30				1.8
6											
7			9	M	SS	12	18				1.8
8											
9			8	M	SS	12	25				2.0
10											
11											
12											
13											
14											
15											
16											
17											
18											
19											
20											
	End of boring at 20 feet										

DEPTH:	DRILLING METHOD	WATER LEVEL MEASUREMENTS						NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG	
		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL		WATER LEVEL
0-18	3.25" HSA	1/5/12		20.0	18.0	20.0	None		None
BORING COMPLETED: 1/5/12									
DR:	LG:	Rig: GDC							

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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-7 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	SILTY CLAY, a little organics, brown, frozen to about 1 foot then stiff (CL)	TOPSOIL	12	F	SS	12	22				2.0
2	LEAN CLAY, brown, firm to stiff (CL)	TILL	6	M	SS	12	21				2.0
3			10	M	SS	12	20				1.5
4			13	M	SS	4	22				
5			6	M	SS	12	23				1.5
6			6	M	SS	12	27				1.3
7			5	M	SS	12	22				0.5
8			6	M	SS	12	21				0.8
9			7	M	SS	12	18	116			1.5
10			7	M	SS	12	22				0.8
11											
12											
13											
14											
15											
16											
17											
18											
19											
20	End of boring at 20 feet										

DEPTH: DRILLING METHOD		WATER LEVEL MEASUREMENTS							NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG
		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL	WATER LEVEL	
0-18	3.25" HSA	1/5/12		20.0	18.0	20.0	None	None	
BORING COMPLETED: 1/5/12									
DR: LG: Rig: GDC									



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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-8 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	FILL, silty clay, a little organics, brown, frozen to about 1 foot then firm (CL-ML)	FILL	7	F	SS	12	20				1.3
2	FILL, lean clay, brown, firm (CL)										
3			5	M	SS	12	29				1.0
4	SILT, black to brown, wet, loose (ML)	BURIED TOPSOIL	5	M	SS	12	17				1.3
5											
6	LEAN CLAY, brown, firm (CL)	TILL	7	M	SS	12	23				1.3
7			7	M	SS	12	32				2.5
8			7	M	SS	12	29	93			2.0
9			4	M	SS	12	13				
10			5	M	SS	12	19				
11			4	M	SS	12	21				0.8
12	Sandy LEAN CLAY, grayish brown, soft (CL)		4	M	SS	12	21				0.8
13											
14											
15											
16	LEAN CLAY, brown, soft (CL)		4	M	SS	12	21				0.8
17											
18											
19											
20	End of boring at 20 feet										

DEPTH: DRILLING METHOD		WATER LEVEL MEASUREMENTS							NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG
		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL	WATER LEVEL	
0-18	3.25" HSA	1/5/12		20.0	18.0	20.0	None	None	
BORING COMPLETED: 1/5/12									
DR:	LG: Rig: GDC								

06/04





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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-9 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	About 2 inches of topsoil LEAN CLAY, brown, frozen to about 1 foot then stiff to firm (CL)	TOPSOIL TILL	7	F	SS	13	18				3.0
2											
3			5	M	SS	10	16				3.0
4											
5			9	M	SS	12	15				3.3
6											
7			13	M	SS	8	17				1.8
8											
9	-- becomes lean to fat clay (CL-CH) from 8 to 10 feet		8	M	SS	10	35				2.5
10											
11			8	M	SS	11	15				4.0
12											
13			5	M	SS	6	19				0.8
14											
15			7	M	SS	7	19				0.8
16											
17			4	M	SS	6	19				1.0
18											
19			5	M	SS	6	26				1.5
20	End of boring at 20 feet										

DEPTH: DRILLING METHOD		WATER LEVEL MEASUREMENTS					NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG		
		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH		DRILLING FLUID LEVEL	WATER LEVEL
0-18	3.25" HSA	1/5/12		20.0	18.0	20.0		None	None
BORING COMPLETED: 1/5/12									
DR:	LG:	Rig: GDC							





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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-10 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	LEAN CLAY, brown, frozen to about 1 foot then stiff to firm (CL)	TILL	8	F	SS	20	13				3.0
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
13											
14											
15											
16											
17											
18											
19					4	M	SS	20	20	110	
20	End of boring at 20 feet										

DEPTH: DRILLING METHOD		WATER LEVEL MEASUREMENTS							NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG
		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL	WATER LEVEL	
0-18	3.25" HSA	1/5/12		20.0	18.0	20.0	None	None	
BORING COMPLETED: 1/5/12									
DR: LG: Rig: GDC									

06/04



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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-11 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	About 3 inches of topsoil	TOPSOIL	7	F	SS	12	16				1.3
2	SILTY CLAY, a little organics, brown, frozen to about 1 foot then firm (CL-ML to OL)	TILL									
3	SILTY CLAY, brown, firm (CL-ML)		5	M	SS	12	18				1.8
4											
5	SILTY SAND, fine grained, brown, moist, medium dense to dense (SM)	COARSE ALLUVIUM	17	M	SS	20	16				
6											
7			21	M	SS	20	15				
8											
9			30	M	SS	12	15				
10											
11			34	M	SS	12	14				
12											
13			18	M	SS	12	16				
14											
15	LEAN CLAY, brown, very stiff (CL)	TILL	26	M	SS	12	27				1.3
16											
17			26	M	SS	12	15				3.5
18											
19			24	M	SS	12	17				1.5
20											
	End of boring at 20 feet										
DEPTH: DRILLING METHOD		WATER LEVEL MEASUREMENTS							NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG		
0-18	3.25" HSA	DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL	WATER LEVEL			
		1/5/12		20.0	18.0	20.0	None	None			
BORING COMPLETED: 1/5/12											
DR:	LG:	Rig: GDC									

06/04



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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-12 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	About 4 inches of topsoil LEAN CLAY, brown, frozen to about 1 foot then firm to hard (CL)	TOPSOIL TILL	7	F	SS	12	23				1.5
2											
3			7	M	SS	12	36				0.8
4											
5			18	M	SS	12	14				4.5
6											
7			31	M	SS	12	14				4.5
8											
9			11	M	SS	12	21				4.3
10											
11			13	M	SS	12	17				3.8
12											
13			9	M	SS	12	19				1.3
14											
15			6	M	SS	12	19				1.5
16											
17			9	M	SS	12	25				2.8
18											
19			5	M	SS	12	18				0.8
20	End of boring at 20 feet										

DEPTH:	DRILLING METHOD	WATER LEVEL MEASUREMENTS							NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG
		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL	WATER LEVEL	
0-18	3.25" HSA	1/5/12		20.0	18.0	20.0	None	None	
BORING COMPLETED: 1/5/12									
DR: LG: Rig: GDC									



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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-13 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	About 4 inches of topsoil	TOPSOIL	5	F	SS	20	26				1.0
2	LEAN CLAY, brown, frozen to about 1 foot	TILL									
3	then firm to very stiff (CL)		7	M	SS	20	17				2.5
4											
5			11	M	SS	20	14				4.5
6											
7			19	M	SS	20	15				4.3
8											
9			12	M	SS	20	17				4.0
10											
11			17	M	SS	20	16				4.3
12											
13			8	M	SS	20	20				1.3
14											
15			8	M	SS	20	14				1.5
16											
17			6	M	SS	20	19				1.3
18											
19			5	M	SS	20	20				1.0
20											
End of boring at 20 feet											

DEPTH:	DRILLING METHOD	WATER LEVEL MEASUREMENTS						NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG	
		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL		WATER LEVEL
0-18	3.25" HSA	1/5/12		20.0	18.0	20.0	None		None
BORING COMPLETED: 1/5/12									
DR: LG: Rig: GDC									



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## SUBSURFACE BORING LOG

AET JOB NO: **12-00695**

LOG OF BORING NO. **B-14 (p. 1 of 1)**

PROJECT: **Nixon Street Industrial Park; Little Chute, Wisconsin**

DEPTH IN FEET	SURFACE ELEVATION: _____ MATERIAL DESCRIPTION	GEOLOGY	N	MC	SAMPLE TYPE	REC IN.	FIELD & LABORATORY TESTS				
							WC	DEN	LL	PL	Qp
1	About 2 inches of topsoil	TOPSOIL	5	F	SS	20	32				1.5
2	LEAN CLAY, brown, frozen to about 1 foot then firm to very stiff (CL)	TILL									
3			5	M	SS	20	20				2.3
4											
5			7	M	SS	20	23				1.0
6											
7			10	M	SS	12	21				1.3
8											
9			15	M	SS	20	17				2.5
10											
11			16	M	SS	20	16				2.5
12											
13			6	M	SS	20	20				1.0
14											
15			6	M	SS	20	18				1.0
16											
17			6	M	SS	20	19				1.5
18											
19			7	M	SS	20	19				1.0
20											
End of boring at 20 feet											

DEPTH:	DRILLING METHOD	WATER LEVEL MEASUREMENTS							NOTE: REFER TO THE ATTACHED SHEETS FOR AN EXPLANATION OF TERMINOLOGY ON THIS LOG
		DATE	TIME	SAMPLED DEPTH	CASING DEPTH	CAVE-IN DEPTH	DRILLING FLUID LEVEL	WATER LEVEL	
0-18	3.25" HSA	1/5/12		20.0	18.0	20.0	None	None	
BORING COMPLETED: 1/5/12									
DR: LG: Rig: GDC									

06/04

---

## EXCAVATION AND REFILLING FOR STRUCTURAL SUPPORT

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### EXCAVATION

Excavations for structural support at soil boring locations should be taken to depths recommended in the geotechnical report. Since conditions can vary, recommended excavation depths between and beyond the boring locations should be evaluated by geotechnical field personnel. If ground water is present, the excavation should be dewatered to avoid the risk of unobservable poor soils being left in-place. Excavation base soils may become disturbed due to construction traffic, ground water or other reasons. Such soils should be subcut to underlying undisturbed soils. Where the excavation base slopes steeper than 4:1, the excavation bottom should be benched across the slope parallel to the excavation contour.

Soil stresses under footings spread out with depth. Therefore, the excavation bottom and subsequent fill system should be laterally oversized beyond footing edges to support the footing stresses. A lateral oversize equal to the depth of fill below the footing (i.e., 1:1 oversize) is usually recommended. The lateral oversize is usually increased to 1.5:1 where compressible organic soils are exposed on the excavation sides. Variations in oversize requirements may be recommended in the geotechnical report or can be evaluated by the geotechnical field personnel.

Unless the excavation is retained, the backslopes should be maintained in accordance with OSHA Regulations (Standards - 29 CFR), Part 1926, Subpart P, "Excavations" (found on [www.osha.gov](http://www.osha.gov)). Even with the required OSHA sloping, ground water can induce sideslope raveling or running which could require that flatter slopes or other approaches be used.

### FILLING

Filling should proceed only after the excavation bottom has been approved by the geotechnical engineer/technician. Approved fill material should be uniformly compacted in thin lifts to the compaction levels specified in the geotechnical report. The lift thickness should be thin enough to achieve specified compaction through the full lift thickness with the compaction equipment utilized. Typical thicknesses are 6" to 9" for clays and 6" to 12" for sands. Fine grained soils are moisture sensitive and are often wet (water content exceeds the "optimum moisture content" defined by a Proctor test). In this case, the soils should be scarified and dried to achieve a water content suitable for compaction. This drying process can be time consuming, labor intensive, and requires favorable weather.

Select fill material may be needed where the excavation bottom is sensitive to disturbance or where standing water is present. Sands (SP) which are medium to coarse grained are preferred, and can be compacted in thicker lift thicknesses than finer grained soils.

Filling operations for structural support should be closely monitored for fill type and compaction by a geotechnical technician. Monitoring should be on a full-time basis in cases where vertical fill placement is rapid; during freezing weather conditions; where ground water is present; or where sensitive bottom conditions are present.

### EXCAVATION/REFILLING DURING FREEZING TEMPERATURES

Soils that freeze will heave and lose density. Upon thawing, these soils will not regain their original strength and density. The extent of heave and density loss depends on the soil type and moisture condition; and is most pronounced in clays and silts. Foundations, slabs, and other improvements should be protected from frost intrusion during freezing weather. For earthwork during freezing weather, the areas to be filled should be stripped of frozen soil, snow and ice prior to new fill placement. In addition, new fill should not be allowed to freeze during or after placement. For this reason, it may be preferable to do earthwork operations in small plan areas so grade can be quickly attained instead of large areas where much frost stripping may be needed.

**Report of Preliminary Geotechnical Exploration**  
**Nixon Street Industrial Site**  
**Little Chute, Wisconsin**  
**January 19, 2012**  
**Project No. 12-00695**

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AMERICAN  
ENGINEERING  
TESTING, INC.

## **Appendix B**

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AET Project No. 12-00695

**Geotechnical Report Limitations and Guidelines for Use**

## Appendix B

### Geotechnical Report Limitations and Guidelines for Use AET Project No. 12-00695

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#### B.1 REFERENCE

This appendix provides information to help you manage your risks relating to subsurface problems which are caused by construction delays, cost overruns, claims, and disputes. This information was developed and provided by ASFE<sup>1</sup>, of which, we are a member firm.

#### B.2 RISK MANAGEMENT INFORMATION

##### B.2.1 Geotechnical Services are Performed for Specific Purposes, Persons, and Projects

Geotechnical engineers structure their services to meet the specific needs of their clients. A geotechnical engineering study conducted for a civil engineer may not fulfill the needs of a construction contractor or even another civil engineer. Because each geotechnical engineering study is unique, each geotechnical engineering report is unique, prepared solely for the client. No one except you should rely on your geotechnical engineering report without first conferring with the geotechnical engineer who prepared it. And no one, not even you, should apply the report for any purpose or project except the one originally contemplated.

##### B.2.2 Read the Full Report

Serious problems have occurred because those relying on a geotechnical engineering report did not read it all. Do not rely on an executive summary. Do not read selected elements only.

##### B.2.3 A Geotechnical Engineering Report is Based on A Unique Set of Project-Specific Factors

Geotechnical engineers consider a number of unique, project-specific factors when establishing the scope of a study. Typically factors include: the client's goals, objectives, and risk management preferences; the general nature of the structure involved, its size, and configuration; the location of the structure on the site; and other planned or existing site improvements, such as access roads, parking lots, and underground utilities. Unless the geotechnical engineer who conducted the study specifically indicates otherwise, do not rely on a geotechnical engineering report that was:

- not prepared for you,
- not prepared for your project,
- not prepared for the specific site explored, or
- completed before important project changes were made.

Typical changes that can erode the reliability of an existing geotechnical engineering report include those that affect:

- the function of the proposed structure, as when it's changed from a parking garage to an office building, or from a light industrial plant to a refrigerated warehouse,
- elevation, configuration, location, orientation, or weight of the proposed structure,
- composition of the design team, or
- project ownership.

As a general rule, always inform your geotechnical engineer of project changes, even minor ones, and request an assessment of their impact. Geotechnical engineers cannot accept responsibility or liability for problems that occur because their reports do not consider developments of which they were not informed.

##### B.2.4 Subsurface Conditions Can Change

A geotechnical engineering report is based on conditions that existed at the time the study was performed. Do not rely on a geotechnical engineering report whose adequacy may have been affected by: the passage of time; by man-made events, such as construction on or adjacent to the site; or by natural events, such as floods, earthquakes, or groundwater fluctuations. Always contact the geotechnical engineer before applying the report to determine if it is still reliable. A minor amount of additional testing or analysis could prevent major problems.

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<sup>1</sup> ASFE, 8811 Colesville Road/Suite G106, Silver Spring, MD 20910  
Telephone: 301/565-2733; [www.asfe.org](http://www.asfe.org)



**Appendix B**  
**Geotechnical Report Limitations and Guidelines for Use**  
**AET Project No. 12-00695**

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**B.2.5 Most Geotechnical Findings Are Professional Opinions**

Site exploration identified subsurface conditions only at those points where subsurface tests are conducted or samples are taken. Geotechnical engineers review field and laboratory data and then apply their professional judgment to render an opinion about subsurface conditions throughout the site. Actual subsurface conditions may differ, sometimes significantly, from those indicated in your report. Retaining the geotechnical engineer who developed your report to provide construction observation is the most effective method of managing the risks associated with unanticipated conditions.

**B.2.6 A Report's Recommendations Are Not Final**

Do not overrely on the construction recommendations included in your report. Those recommendations are not final, because geotechnical engineers develop them principally from judgment and opinion. Geotechnical engineers can finalize their recommendations only by observing actual subsurface conditions revealed during construction. The geotechnical engineer who developed your report cannot assume responsibility or liability for the report's recommendations if that engineer does not perform construction observation.

**B.2.7 A Geotechnical Engineering Report Is Subject to Misinterpretation**

Other design team members' misinterpretation of geotechnical engineering reports has resulted in costly problems. Lower that risk by having your geotechnical engineer confer with appropriate members of the design team after submitting the report. Also retain your geotechnical engineer to review pertinent elements of the design team's plans and specifications. Contractors can also misinterpret a geotechnical engineering report. Reduce that risk by having your geotechnical engineer participate in prebid and preconstruction conferences, and by providing construction observation.

**B.2.8 Do Not Redraw the Engineer's Logs**

Geotechnical engineers prepare final boring and testing logs based upon their interpretation of field logs and laboratory data. To prevent errors or omissions, the logs included in a geotechnical engineering report should never be redrawn for inclusion in architectural or other design drawings. Only photographic or electronic reproduction is acceptable, but recognizes that separating logs from the report can elevate risk.

**B.2.9 Give Contractors a Complete Report and Guidance**

Some owners and design professionals mistakenly believe they can make contractors liable for unanticipated subsurface conditions by limiting what they provide for bid preparation. To help prevent costly problems, give contractors the complete geotechnical engineering report, but preface it with a clearly written letter of transmittal. In the letter, advise contractors that the report was not prepared for purposes of bid development and that the report's accuracy is limited; encourage them to confer with the geotechnical engineer who prepared the report (a modest fee may be required) and/or to conduct additional study to obtain the specific types of information they need or prefer. A prebid conference can also be valuable. Be sure contractors have sufficient time to perform additional study. Only then might you be in a position to give contractors the best information available to you, while requiring them to at least share some of the financial responsibilities stemming from unanticipated conditions.

**B.2.10 Read Responsibility Provisions Closely**

Some clients, design professionals, and contractors do not recognize that geotechnical engineering is far less exact than other engineering disciplines. This lack of understanding has created unrealistic expectations that have led to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their report. Sometimes labeled "limitations" many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks. Read these provisions closely. Ask questions. Your geotechnical engineer should respond fully and frankly.

**B.2.11 Geoenvironmental Concerns Are Not Covered**

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. For that reason, a geotechnical engineering report does not usually relate any geoenvironmental findings, conclusions, or recommendations; e.g., about the likelihood of encountering underground storage tanks or regulated contaminants. Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. Do not rely on an environmental report prepared for someone else.

January 31, 2012

Mr. Roy Van Gheem, P.E.  
Director of Public Works  
Village of Little Chute  
1940 Buchanan Street  
Little Chute, Wisconsin 54140

Re: Discussion of Site Preparation  
Nixon Industrial Site  
Little Chute, Wisconsin  
AET Project No. 12-00695

Dear Mr. Van Gheem:

We are submitting this letter to recap our telephone conversation today regarding estimates of the work needed to prepare the site for a "typical" industrial development.

The borings that we drilled showed a general condition of fill and fill over buried topsoil in most of the northern parcel. The areas where we did not find fill/buried topsoil were borings 5, 6, and 7. Thus, for preliminary estimating of earthwork requirements, we recommend using an average depth of undercutting of 6 feet below existing grade. For a 50,000-square foot building, this would take about 12,000 cubic yards of soil correction(not including any fill that might be needed to raise the grade at the building).

We recommend the use of granular fill because it would be easier to compact than clay fill, and because granular fill generally performs better under industrial buildings. However, the party that would purchase the parcel could elect to use clay fill if his anticipated structural and floor loads were of magnitudes that could be supported on such soil. Whichever type of fill is chosen, the cost will depend on factors in construction contracting at the time. If the village were to make granular fill available for site correction, the cost would be reduced.

In the southern parcel we did not find fill or buried topsoil; rather, we found surficial topsoil. Thus, site preparation for the southern parcel would not be as extensive as for the northern parcel.

Regarding pavement subgrades in the northern parcel, the need to undercut and replace the fill and buried topsoil will depend in part on the developer's risk preference. It may be possible to leave the buried topsoil in place and accept more pavement maintenance over time.

We wish to reiterate that any party purchasing either parcel should be strongly advised to carry out a project specific geotechnical exploration, with borings located at strategic points of building and equipment loads, and with laboratory testing applicable to the applied loads. This is especially needed for any facility with heavy floor loads or tanks, and/or heavy column loads.

Mr. Roy Van Gheem, P.E.  
Village of Little Chute  
January 31, 2012  
Page 2

If you have questions regarding this letter or if we can be of further assistance to you, please contact us.

Sincerely,  
AMERICAN ENGINEERING TESTING, INC.

William C. Kwasny, P.E.  
Principal Engineer  
Registered Professional Engineer, Wisconsin

**EXHIBIT C**

**To**

**Request for Proposals from Construction Managers for a  
Municipal Garage by the Village of Little Chute, WI**

**Certified Survey Map**

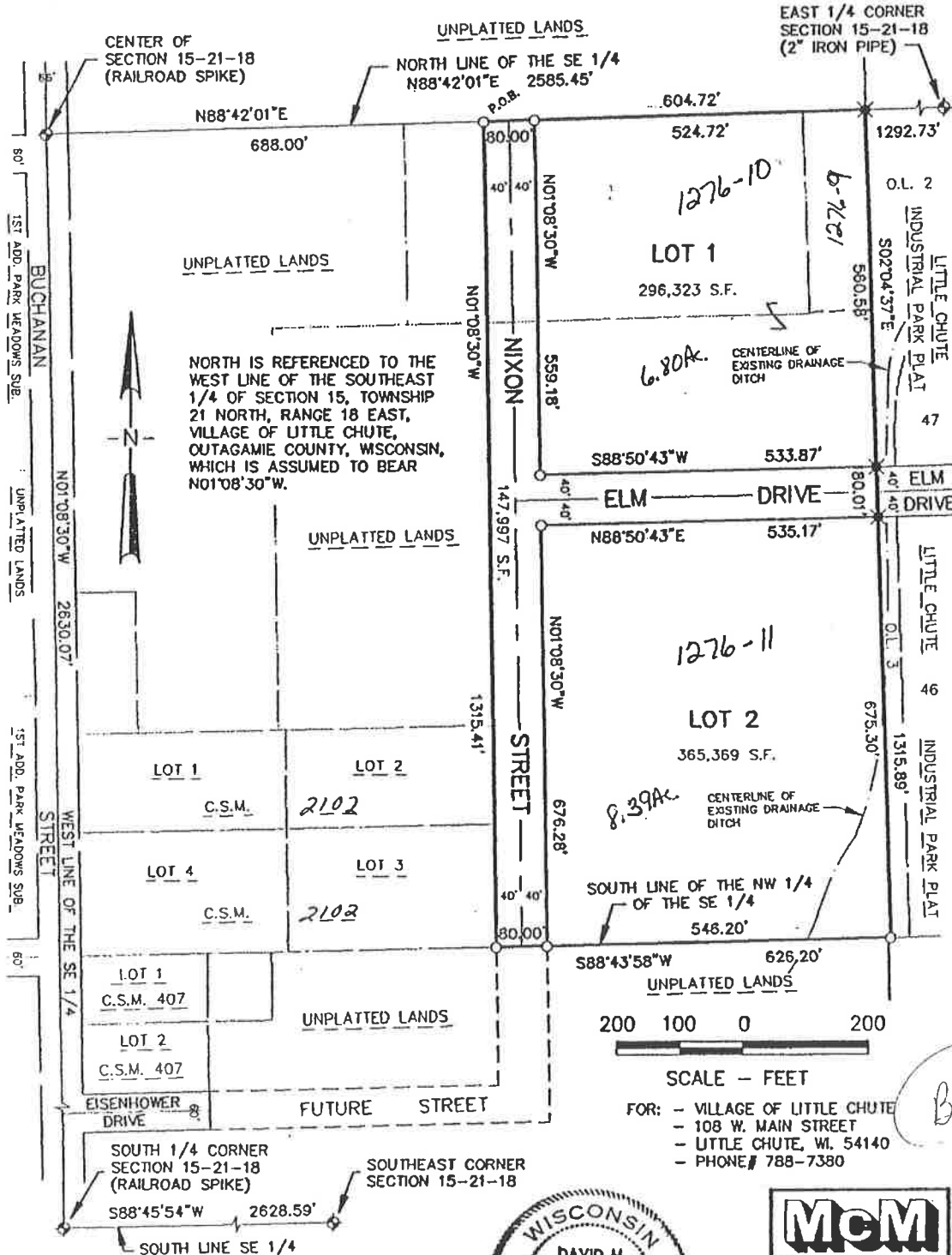
**(attached)**

15/21/85  
17/86

CERTIFIED SURVEY MAP NO. 2103

PAGE 1 OF 3 Page 2103

PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 21 NORTH, RANGE 18 EAST, VILLAGE OF LITTLE CHUTE, OUTAGAMIE COUNTY, WISCONSIN.



LEGEND

- - 3/4" x 24" ROUND IRON REBAR WEIGHING 1.5 lbs./lineal ft. SET
- ✱ - 1 1/4" ROUND STEEL REBAR FOUND
- ✱ - 3/4" ROUND STEEL REBAR FOUND
- CERTIFIED LAND CORNER OUTAGAMIE COUNTY



David M. Schaalz  
12-12-94

**McM**  
**McMAHON ASSOCIATES, INC.**  
ENGINEERS • ARCHITECTS  
SCIENTISTS • SURVEYORS  
1377 MIDWAY ROAD, P.O. BOX 406  
MENASHA, WISCONSIN 54952  
PH (414) 738-0351 54852  
FAX (414) 738-5054

2662 94762 20

B-5

PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 21 NORTH,  
RANGE 18 EAST, VILLAGE OF LITTLE CHUTE, OUTAGAMIE COUNTY, WISCONSIN.

I David M. Schmalz, Wisconsin Registered Land Surveyor S-1284, certify that I have surveyed, divided, mapped and dedicated part of the Northwest 1/4 of the Southeast 1/4 of Section 15, Township 21 North, Range 18 East, Village of Little Chute, Outagamie County, Wisconsin, containing 809,689 square feet (18.58 Acres) of land and described as follows:

Commencing at the South 1/4 corner of said Section 15; Thence N01°08'30"W, 2630.07 feet along the West line of the Southeast 1/4 of Section 15 to the Center of said Section 15; Thence N88°42'01"E, 688.00 feet along the North line of said Southeast 1/4 to the Point of Beginning; Thence continuing N88°42'01"E, 604.72 feet along said North line to the West line of the Little Chute Industrial Park Plat; Thence S02°04'37"E, 1315.89 feet along said West line to the South line of the Northwest 1/4 of the Southeast 1/4 of Section 15; Thence S88°43'58"W, 626.20 feet along said South line; Thence N01°08'30"W, 1315.41 feet to the Point of Beginning. Subject to all easements and restrictions of record.

I further certify that this map is a correct representation of the exterior boundary lines of the land surveyed and the division of that land, and that I have complied with Section 236.34 of the Wisconsin Statutes and the Village of Little Chute Subdivision Ordinance in surveying, dividing and mapping the same.

Given under my hand and seal this 12<sup>th</sup> day of  
DECEMBER, 1994.

David M. Schmalz  
David M. Schmalz, Reg. WI Land Surveyor S-1284



OWNER'S CERTIFICATE OF DEDICATION

Village of Little Chute as Owners, hereby certify that We caused the land described on this map to be surveyed, divided, mapped and dedicated as represented on this map.

Dated this 15 day of December, 1994.

Village of Little Chute

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Donald R. Groat  
Village President

Russell V. Gumpel  
Village Clerk

State of Wisconsin) ss  
Outagamie County)

Personally appeared before me on the 15 day of December, 1994, the above named owner(s) to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Sally A. Giordana  
Notary Public

Outagamie County, WI  
My commission expires 10-04-98



PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 21 NORTH,  
RANGE 18 EAST, VILLAGE OF LITTLE CHUTE, OUTAGAMIE COUNTY, WISCONSIN.

VILLAGE BOARD APPROVAL

Approved by the Village of Little Chute, Outagamie County, Wisconsin, by the Village  
Board on the 7 day of Dec, 1994.

Donald D. Gend  
Village President

Russell V. Gempel  
Village Clerk

CERTIFICATE OF TREASURERS

I, being the duly elected, qualified and acting Treasurer, do hereby certify that in  
accordance with the records in my office there are no un-paid taxes or un-paid  
special assessments on any of the lands included in this Certified Survey Map as of:

Village \_\_\_\_\_ Date \_\_\_\_\_

Dale N. Hany 12/15/94  
Village Treasurer Date

Outagamie County 12-20-94  
County Date

Edward J. Mullen 12-20-94  
County Treasurer Date

RECORDING DATA:

Filed this 20th day of December, 1994 at 10 A.M. in Vol. 11 on  
Page 2103 being Certified Survey Map Number 2103, Document Number 1143243.

Brown Herb  
Register of Deeds

\$  
14.00



David M. Schmalz  
12-12-1994

**EXHIBIT D**

**To**

**Request for Proposals from Construction Managers for a  
Municipal Garage by the Village of Little Chute, WI**

**Storm Sewer Easement**

**(attached)**



**Permanent Storm Sewer  
Easement**

**Document Number**

For good and sufficient consideration, the sufficiency and receipt of which are hereby acknowledged, the undersigned Village of Little Chute (herein "Owner") of the property legally described below, hereby grants a Storm Sewer Easement over a portion of the Owners property to the Village of Little Chute (herein "Village") as described and portrayed on Exhibit A:

Description of "Owners" lands:

All of Lot 2 of Certified Survey Map No. 2103 as recorded in Volume 11 of Certified Survey Maps on page 2103 as Document No. 1143243 & All of Lot 1 of Certified Survey Map No. 5580 as recorded in Volume 32 of Certified Survey Maps on page 5580 as Document No. 1748931, located in the Southwest ¼ and the Northwest ¼ of the Southeast ¼ of Section 15, Township 21 North, Range 18 East, Village of Little Chute, Outagamie County, Wisconsin.

Record and return to:  
Village of Little Chute  
Village Clerk  
108 W. Main Street  
Little Chute, Wisconsin 54140

**Permanent Storm Sewer Easement:** A permanent Storm Sewer Easement is granted by Owner to the Village for the installation and maintenance of underground utilities, pipes, and/or drainage structures, and above ground or underground appurtenances for storm water drainage purposes, including the additional right, but not limited to the additional right, to make repairs and replacements thereof in the future. This Easement area is legally described and portrayed on attached **Exhibit A** and is granted over a portion of the Owners lands described above.

**Easement Property Usage:** The undersigned Owner remains free to use that portion of the Easement properties as described and portrayed on Exhibit A not occupied by the Village for purposes which do not interfere with present or future usage of Easement rights granted to the Village herein. Any such present or future uses by Owner which interfere with present or future uses by Village shall be removed, temporarily or permanently as reasonably necessary, by the Owner to the extent necessary to facilitate use of the Easement property by the Village as authorized herein.

**Restoration:** The Village shall restore the surface of the ground in the Easement area to the extent reasonably practical to the condition that existed prior to performing and installations, maintenance, repairs and replacements of the utilities in the easement property. However, the Village is not required to restore or replace any improvements of the Owner constructed within any present or future easement area.

**Burdened Property and Persons Bound:** This Easement shall be a burden upon the properties described above, and binding upon the Owner and Owner's heirs, successors and assigns in the future which hold or acquire and interest in these properties.

**Recording:** This Easement may be recorded with the Register of Deeds for Outagamie County by the Village.

---

IN WITNESS WHEREOF, the said Grantor has caused these presents to be signed this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

Village of Little Chute

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WISCONSIN    )  
                                  : ss.  
OUTAGAMIE COUNTY    )

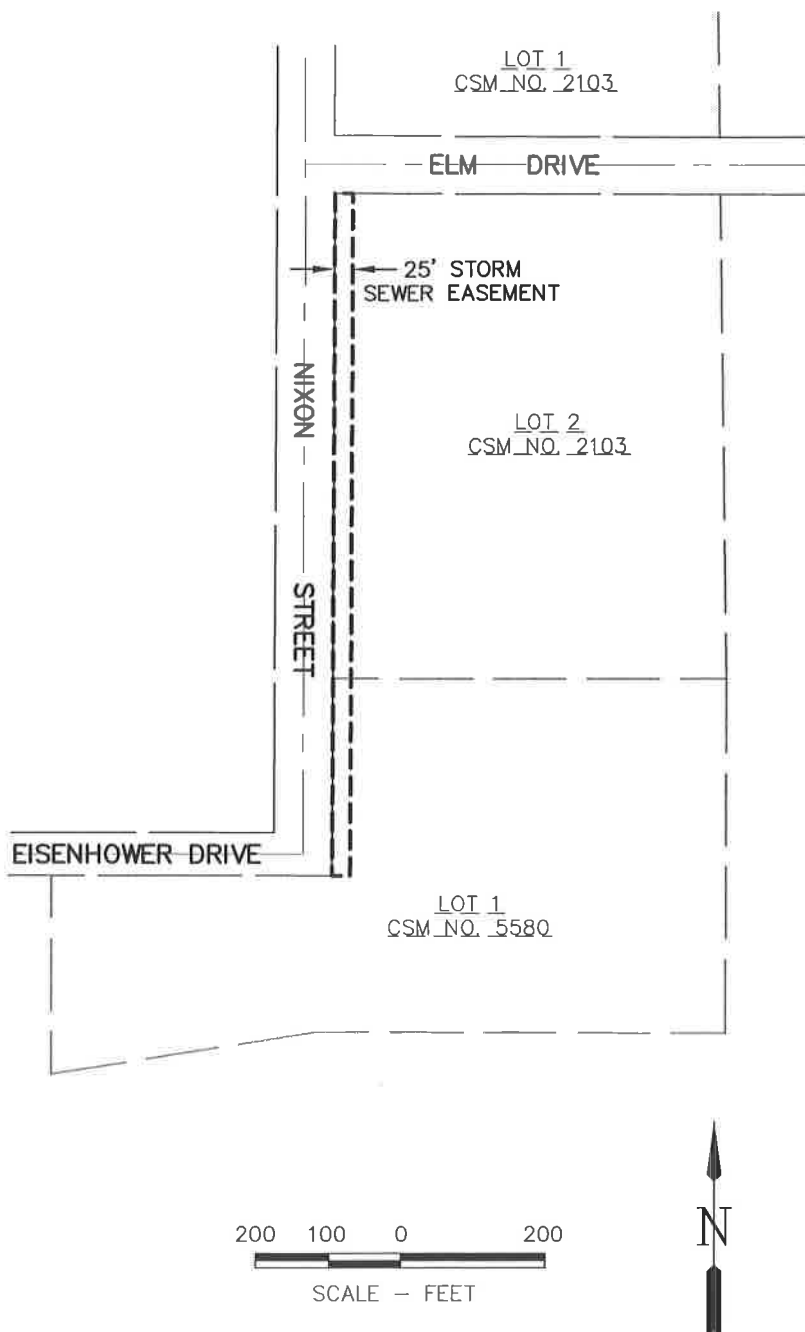
Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the  
above-named, \_\_\_\_\_ and \_\_\_\_\_, to me known to be  
the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin  
My commission is/expires \_\_\_\_\_

# EXHIBIT A

25 FOOT STORM SEWER EASEMENT: A PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. 2103 AS RECORDED IN VOLUME 11 OF CERTIFIED SURVEY MAPS ON PAGE 2103 AS DOCUMENT NO. 1143243 AND PART OF LOT 1 OF CERTIFIED SURVEY MAP NO. 5580 AS RECORDED IN VOLUME 32 OF CERTIFIED SURVEY MAPS ON PAGE 5580 AS DOCUMENT NO. 1748931, LOCATED IN THE SOUTHWEST 1/4 AND THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4, SECTION 15, TOWNSHIP 21 NORTH, RANGE 18 EAST, VILLAGE OF LITTLE CHUTE, OUTAGAMIE COUNTY, WISCONSIN CONTAINING 23,782 SQUARE FEET OF LAND AND DESCRIBED AS FOLLOWS:

THE WEST 25.00 FEET OF SAID LOT 2 OF CERTIFIED SURVEY MAP NO. 2103 AND THE WEST 25.00 FEET OF SAID LOT 1 OF CERTIFIED SURVEY MAP NO. 5580 LYING ADJACENT TO AND EAST OF THE EAST RIGHT-OF-WAY LINE OF NIXON STREET.



dwoelz, w. \PROJECTS\L0001\940690\06 Easements\Nixon St Storm Sewer Easement.dwg, model, Plot Date: 2/8/2016 4:20 PM, xref:s:none

**EXHIBIT E**

**To**

**Request for Proposals from Construction Managers for a  
Municipal Garage by the Village of Little Chute, WI**

**A201- General Conditions**

**(attached)**



# Document A201™ – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

Design of a new municipal garage in the Village of Little Chute to service the needs of the Departments of Public Works and Parks, Recreation and Forestry Department of approximately 44,500 square feet (or less given efficient design inputs) with the facilities generally described in the Preliminary Scope Overview dated as of January 14, 2016 attached to the Agreement as Exhibit A, provided the Village reserves the right to separately install the Salt Storage Building, Cold Storage Building, Yard Waste Site and Material Storage Bins (collectively the "Independent Facilities") after design development is completed, with an approximate total value of \$1,000,000. The Preliminary Scope is subject to modification through the design and budgeting process. The maximum construction budget for this project is \$5,000,000 (collectively, the "Project"). A preliminary geotechnical investigation report has been prepared for this site and an adjoining property. This report is dated January 19, 2012 and has nine boring locations within the proposed development limits. This report is attached as Exhibit B to the Agreement. The Architect will be responsible for determining the suitability of the Project site and shall engage consultants, such as engineers and surveyors to prepare final geotechnical reports and surveys.

t..

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

### THE OWNER:

(Name, legal status (Name and address))

Village of Little Chute  
108 West Main Street  
Little Chute, WI 541140

### THE ARCHITECT:

(Name, legal status (Name and address))

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK

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- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES



## INDEX

(Topics and numbers in bold are section headings.)  
(Numbers and Topics in Bold are Section Headings)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### Access to Work

**3.16**, 6.2.1, **12.1**

Accident Prevention

**10**

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,  
10.2.8, 13.4.2, ~~13.7~~, 13.7.1, 14.1, 15.2

Addenda

1.1.1, ~~3.11.3~~, 11.1

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### Allowances

**3.8**, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, ~~9.7~~, 9.7.1, 9.10,  
11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,  
4.2.7, 9.3.2, 13.5.1

### Arbitration

8.3.1, 11.3.10, ~~13.1~~, 13.1.1, 15.3.2, **15.4**

## ARCHITECT

**4**

Architect, Definition of

**4.1.1**

Architect, Extent of Authority

~~2.4~~, 2.4.1, 3.12.7, 4.1, 4.2, 5.2, ~~6.3~~, 6.3.1, 7.1.2, 7.3.7,  
7.4, ~~9.2~~, 9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1,  
9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4,  
15.1.3, 15.2.1

Architect, Limitations of Authority and  
Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,  
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, ~~7.4~~,  
7.4.1, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

~~2.4~~, 2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

~~2.4~~, 3.1.3, ~~3.5~~, 2.4.1, 3.1.3, 3.5.1, 3.10.2, 4.2.7

Architect's Authority to Reject Work

~~3.5~~, 3.5.1, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, ~~6.3~~,  
6.3.1, 7.3.7, 7.3.9, 8.1.3, 8.3.1, ~~9.2~~, 9.2.1, 9.4.1, 9.5,  
9.8.4, 9.9.1, 13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, ~~3.5~~,  
3.5.1, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,  
3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3,  
9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2,  
13.5, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

### Award of Subcontracts and Other Contracts for Portions of the Work

**5.2**

### Basic Definitions

**1.1**

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

~~9.7~~, 9.7.1, 11.3.9, 11.3.10, ~~13.1~~, 13.1.1, 15.2.5,  
15.2.6.1, 15.3.1, 15.3.2, 15.4.1

## **Boiler and Machinery Insurance**

### **11.3.2**

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

## **Bonds, Performance, and Payment**

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

## **Capitalization**

### **1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

## **Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, ~~9.7~~,

~~9.7.1~~, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval

13.5.4

Certificates of Insurance

9.10.2, 11.1.3

## **Change Orders**

1.1.1, ~~2.4~~, ~~2.4.1~~, 3.4.2, 3.7.4, 3.8.2.3, ~~3.11~~, ~~3.11.1~~,

3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6,

7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2,

11.3.4, 11.3.9, 12.1.2, 15.1.3

**Change Orders**, Definition of

**7.2.1**

## **CHANGES IN THE WORK**

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1,

9.3.1.1, 11.3.9

**Claims**, Definition of

### **15.1.1**

## **CLAIMS AND DISPUTES**

3.2.4, 6.1.1, ~~6.3~~, ~~6.3.1~~, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**,

15.4

**Claims and Timely Assertion of Claims**

15.4.1

## **Claims for Additional Cost**

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4**

## **Claims for Additional Time**

3.2.4, ~~3.7.4~~, ~~6.1.1~~, ~~3.7.46.1.1~~, 8.3.2, 10.3.2, **15.1.5**

## **Concealed or Unknown Conditions, Claims for**

**3.7.4**

**Claims for Damages**

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,

11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

**Claims Subject to Arbitration**

15.3.1, 15.4.1

## **Cleaning Up**

**3.15**, **6.3**

**Commencement of the Work**, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,

6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,

15.1.4

**Commencement of the Work**, Definition of

**8.1.2**

## **Communications Facilitating Contract**

### **Administration**

3.9.1, **4.2.4**

**Completion**, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,

9.10, 12.2, 13.7, 14.1.2

## **COMPLETION, PAYMENTS AND**

**9**

**Completion**, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,

12.2, 13.7

**Compliance with Laws**

~~4.6~~, ~~1.6.1~~, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4,

10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6,

14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

**Concealed or Unknown Conditions**

3.7.4, 4.2.8, 8.3.1, 10.3

**Conditions of the Contract**

1.1.1, 6.1.1, 6.1.4

**Consent**, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,

9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

## **Consolidation or Joinder**

**15.4.4**

## **CONSTRUCTION BY OWNER OR BY**

### **SEPARATE CONTRACTORS**

1.1.4, **6**

**Construction Change Directive**, Definition of

**7.3.1**

## **Construction Change Directives**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**,

9.3.1.1

**Construction Schedules**, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

## **Contingent Assignment of Subcontracts**

**5.4**, 14.2.2.2

## **Continuing Contract Performance**

**15.1.3**

**Contract**, Definition of

**1.1.2**

## **CONTRACT, TERMINATION OR**

### **SUSPENSION OF THE**

5.4.1.1, 11.3.9, **14**

**Contract Administration**

3.1.3, 4, 9.4, 9.5

**Contract Award and Execution**, Conditions Relating

to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

## **Contract Documents, The**

**1.1.1**

Contract Documents, Copies Furnished and Use of

1.5.2, 2.2.5, 5.3

**Contract Documents**, Definition of

**1.1.1**



## **Contract Sum**

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

## **Contract Sum, Definition of**

### **9.1**

#### **Contract Time**

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, ~~9.7~~, ~~9.7.1~~, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

#### **Contract Time, Definition of**

### **8.1.1**

## **CONTRACTOR**

### **3**

#### **Contractor, Definition of**

### **3.1, 6.1.2**

#### **Contractor's Construction Schedules**

**3.10**, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

#### **Contractor's Employees**

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, ~~14.2.1~~, ~~14.2.1.1~~

#### **Contractor's Liability Insurance**

### **11.1**

#### **Contractor's Relationship with Separate Contractors and Owner's Forces**

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

#### **Contractor's Relationship with Subcontractors**

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

#### **Contractor's Relationship with the Architect**

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, ~~3.5~~, ~~3.5.1~~, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

#### **Contractor's Representations**

3.2.1, 3.2.2, ~~3.5~~, ~~3.5.1~~, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

#### **Contractor's Responsibility for Those Performing the Work**

3.3.2, 3.18, ~~3.3~~, ~~5.3.1~~, 6.1.3, 6.2, 9.5.1, 10.2.8

#### **Contractor's Review of Contract Documents**

### **3.2**

#### **Contractor's Right to Stop the Work**

### **9.7**

#### **Contractor's Right to Terminate the Contract**

14.1, 15.1.6

#### **Contractor's Submittals**

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

#### **Contractor's Superintendent**

3.9, 10.2.6

#### **Contractor's Supervision and Construction**

#### **Procedures**

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

#### **Contractual Liability Insurance**

11.1.1.8, 11.2

#### **Coordination and Correlation**

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

#### **Copies Furnished of Drawings and Specifications**

1.5, 2.2.5, 3.11

#### **Copyrights**

1.5, **3.17**

#### **Correction of Work**

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**

#### **Correlation and Intent of the Contract Documents**

### **1.2**

#### **Cost, Definition of**

### **7.3.7**

#### **Costs**

~~2.4~~, ~~2.4.1~~, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

#### **Cutting and Patching**

**3.14**, 6.2.5

#### **Damage to Construction of Owner or Separate Contractors**

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

#### **Damage to the Work**

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, ~~10.4~~, ~~10.4.1~~, 11.3.1, 12.2.4

#### **Damages, Claims for**

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

#### **Damages for Delay**

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

#### **Date of Commencement of the Work, Definition of**

### **8.1.2**

#### **Date of Substantial Completion, Definition of**

### **8.1.3**

#### **Day, Definition of**

### **8.1.4**

#### **Decisions of the Architect**

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, ~~9.2~~, ~~9.2.1~~, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

#### **Decisions to Withhold Certification**

9.4.1, **9.5**, 9.7, 14.1.1.3

#### **Defective or Nonconforming Work, Acceptance, Rejection and Correction of**

~~2.3~~, ~~2.4~~, ~~3.5~~, ~~2.3.1~~, ~~2.4.1~~, ~~3.5.1~~, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

#### **Defective Work, Definition of**

### **3.5.1**

#### **Definitions**

1.1, 2.1.1, 3.1.1, ~~3.5~~, ~~3.5.1~~, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

#### **Delays and Extensions of Time**

~~3.2~~, ~~3.2.1~~, 3.7.4, 5.2.3, 7.2.1, 7.3.1, ~~7.4~~, ~~7.4.1~~, **8.3**, 9.5.1, ~~9.7~~, ~~10.3.2~~, ~~10.4~~, ~~9.7.1~~, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

#### **Disputes**

~~6.3~~, ~~6.3.1~~, 7.3.9, 15.1, 15.2

## **Documents and Samples at the Site**

### **3.11**

#### **Drawings, Definition of**

##### **1.1.5**

Drawings and Specifications, Use and Ownership of  
3.11

Effective Date of Insurance

8.2.2, 11.1.2

#### **Emergencies**

**10.4**, 14.1.1.2, 15.1.4

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,

10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or

1.1.3, 1.1.6, 3.4, ~~3.5~~, ~~3.5.1~~, 3.8.2, 3.8.3, 3.12, ~~3.13~~,

~~3.13.1~~, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2,

9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1,

14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, ~~3.5~~,

~~3.5.1~~, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5,

8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

Extensions of Time

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, ~~7.4~~, ~~9.5.1~~, ~~9.7~~, ~~10.3.2~~,

~~10.4~~, ~~7.4.1~~, ~~9.5.1~~, ~~9.7.1~~, ~~10.3.2~~, ~~10.4.1~~, 14.3, 15.1.5,

15.2.5

#### **Failure of Payment**

9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

#### **Final Completion and Final Payment**

4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5,

~~12.3~~, ~~12.3.1~~, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

Fire and Extended Coverage Insurance

11.3.1.1

## **GENERAL PROVISIONS**

### **1**

#### **Governing Law**

##### **13.1**

Guarantees (See Warranty)

#### **Hazardous Materials**

10.2.4, **10.3**

Identification of Subcontractors and Suppliers

5.2.1

#### **Indemnification**

~~3.17~~, ~~3.17.1~~, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6,

11.3.1.2, 11.3.7

#### **Information and Services Required of the Owner**

2.1.2, **2.2**, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,

9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,

13.5.2, 14.1.1.4, 14.1.4, 15.1.3

#### **Initial Decision**

##### **15.2**

#### **Initial Decision Maker, Definition of**

1.1.8

Initial Decision Maker, Decisions

14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,  
15.2.5

#### **Injury or Damage to Person or Property**

**10.2.8**, ~~10.4~~ **10.4.1**

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,

9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

#### **Instruments of Service, Definition of**

##### **1.1.7**

Insurance

3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, **11**

#### **Insurance, Boiler and Machinery**

##### **11.3.2**

#### **Insurance, Contractor's Liability**

##### **11.1**

Insurance, Effective Date of

8.2.2, 11.1.2

#### **Insurance, Loss of Use**

##### **11.3.3**

#### **Insurance, Owner's Liability**

##### **11.2**

#### **Insurance, Property**

10.2.5, **11.3**

Insurance, Stored Materials

~~9.3~~ ~~29.3.2~~, ~~11.4.1.4~~

## **INSURANCE AND BONDS**

### **11**

Insurance Companies, Consent to Partial Occupancy

~~9.9.1~~, ~~11.4.1.5~~

Insurance Companies, Settlement with

~~9.9~~ ~~11.4.10~~

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

#### **Interest**

##### **13.6**

#### **Interpretation**

1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12, 15.1.4

Judgment on Final Award

15.4.2

#### **Labor and Materials, Equipment**

1.1.3, 1.1.6, **3.4**, ~~3.5~~, ~~3.5.1~~, 3.8.2, 3.8.3, 3.12, 3.13,

3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,

9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

## Laws and Regulations

1.5, 3.2.3, 3.6, 3.7, 3.12.10, ~~3.13~~, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, ~~13.1~~, 13.1.1, 13.4, 13.5.1, 13.5.2, ~~13.6~~, 13.6.1, 14, 15.2.8, 15.4

## Liens

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

## Limitations, Statutes of

12.2.5, 13.7, 15.4.1.1

## Limitations of Liability

~~2.3~~, ~~3.2.2~~, ~~3.5~~, ~~3.12.10~~, ~~3.17~~, 2.3.1, 3.2.2, 3.5.1, 3.12.10, 3.17.1, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2

## Limitations of Time

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, ~~5.3~~, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, ~~9.2~~, 9.2.1, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, ~~9.7~~, 9.7.1, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

## Loss of Use Insurance

### 11.3.3

## Material Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

## Materials, Hazardous

10.2.4, **10.3**

## Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.5.1, 3.4.1, ~~3.5~~, 3.5.1, 3.8.2, 3.8.3, 3.12, ~~3.13~~, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

## Means, Methods, Techniques, Sequences and

## Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

## Mechanic's Lien

2.1.2, 15.2.8

## Mediation

8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1

## Minor Changes in the Work

1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**

## MISCELLANEOUS PROVISIONS

## 13

## Modifications, Definition of

### 1.1.1

## Modifications to the Contract

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, ~~9.7~~, 9.7.1, 10.3.2, 11.3.1

## Mutual Responsibility

### 6.2

## Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

## Nonconforming Work, Rejection and Correction of

~~2.3~~, ~~2.4~~, ~~3.5~~, 2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

## Notice

2.2.1, ~~2.3~~, ~~2.4~~, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, ~~9.7~~, 9.7.1, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

## Notice, Written

~~2.3~~, ~~2.4~~, 2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, ~~9.7~~, 9.7.1, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1

## Notice of Claims

3.7.4, 4.5, 10.2.8, **15.1.2**, 15.4

## Notice of Testing and Inspections

13.5.1, 13.5.2

## Observations, Contractor's

3.2, 3.7.4

## Occupancy

2.2.2, 9.6.6, 9.8, 11.3.1.5

## Orders, Written

1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1

## OWNER

### 2

## Owner, Definition of

### 2.1.1

## Owner, Information and Services Required of the

2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

## Owner's Authority

1.5, 2.1.1, ~~2.3~~, ~~2.4~~, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, ~~6.3~~, 6.3.1, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, ~~12.3~~, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7

## Owner's Financial Capability

2.2.1, 13.2.2, 14.1.1.4

## Owner's Liability Insurance

### 11.2

## Owner's Loss of Use Insurance

### 11.3.3

## Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

## Owner's Right to Carry Out the Work

2.4, 14.2.2

## Owner's Right to Clean Up

### 6.3

## Owner's Right to Perform Construction and to Award Separate Contracts

### 6.1

## Owner's Right to Stop the Work

### 2.3

## Owner's Right to Suspend the Work

14.3

## Owner's Right to Terminate the Contract

14.2

**Ownership and Use of Drawings, Specifications and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11, 3.17, 4.2.12, 5.33, 11.1, 3.17.1, 4.2.12, 5.3.1

**Partial Occupancy or Use**

9.6.6, **9.9**, 11.3.1.5

**Patching, Cutting and**

**3.14**, 6.2.5

**Patents**

3.17

**Payment, Applications for**

4.2.5, 7.3.9, ~~9.2~~, ~~9.2.1~~, **9.3**, 9.4, 9.5, 9.6.3, ~~9.7~~, ~~9.7.1~~, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, ~~9.7~~, ~~9.7.1~~, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

**Payment, Failure of**

9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

**Payment, Final**

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, ~~12.3~~, ~~11.4.5~~, ~~12.3.1~~, 13.7, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**

7.3.7.4, 9.6.7, 9.10.3, ~~11.4.9~~, **11.4**

**Payments, Progress**

9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**PAYMENTS AND COMPLETION**

**9**

**Payments to Subcontractors**

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2

**PCB**

10.3.1

**Performance Bond and Payment Bond**

7.3.7.4, 9.6.7, 9.10.3, ~~11.4.9~~, **11.4**

**Permits, Fees, Notices and Compliance with Laws**

2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

**PERSONS AND PROPERTY, PROTECTION OF**

**10**

**Polychlorinated Biphenyl**

10.3.1

**Product Data, Definition of**

**3.12.2**

**Product Data and Samples, Shop Drawings**

3.11, **3.12**, 4.2.7

**Progress and Completion**

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.3

**Progress Payments**

9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**Project, Definition of the**

**1.1.4**

**Project Representatives**

4.2.10

**Property Insurance**

10.2.5, **11.3**

**PROTECTION OF PERSONS AND PROPERTY**

**10**

**Regulations and Laws**

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

**Rejection of Work**

~~3.5~~, ~~3.5.1~~, 4.2.6, 12.2.1

**Releases and Waivers of Liens**

9.10.2

**Representations**

3.2.1, ~~3.5~~, ~~3.5.1~~, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

**Representatives**

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

**Responsibility for Those Performing the Work**

3.3.2, 3.18, 4.2.3, ~~5.3~~, ~~5.3.1~~, 6.1.3, 6.2, 6.3, 9.5.1, 10

**Retainage**

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field**

**Conditions by Contractor**

**3.2**, 3.12.7, 6.1.3

**Review of Contractor's Submittals by Owner and Architect**

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

**Review of Shop Drawings, Product Data and**

**Samples by Contractor**

3.12

**Rights and Remedies**

1.1.2, 2.3, 2.4, ~~3.5~~, ~~3.5.1~~, 3.7.4, 3.15.2, 4.2.6, ~~4.5~~, ~~5.3~~, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14, 15.4

**Royalties, Patents and Copyrights**

**3.17**

**Rules and Notices for Arbitration**

15.4.1

**Safety of Persons and Property**

**10.2**, 10.4

**Safety Precautions and Programs**

3.3.1, 4.2.2, 4.2.7, ~~5.3~~, ~~5.3.1~~, **10.1**, 10.2, 10.4

**Samples, Definition of**

**3.12.3**

**Samples, Shop Drawings, Product Data and**

3.11, **3.12**, 4.2.7

**Samples at the Site, Documents and**

**3.11**

**Schedule of Values**

**9.2**, 9.3.1

**Schedules, Construction**

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

**Separate Contracts and Contractors**

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 11.4.7, 12.1.2

**Shop Drawings, Definition of**

**3.12.1**

**Shop Drawings, Product Data and Samples**

3.11, **3.12**, 4.2.7



## Site, Use of

3.13, 6.1.1, 6.2.1

## Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

## Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

## Special Inspections and Testing

4.2.6, 12.2.1, 13.5

## Specifications, Definition of the

1.1.6

## Specifications, The

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

## Statute of Limitations

13.7, 15.4.1.1

## Stopping the Work

2.3, 9.7, 10.3, 14.1

## Stored Materials

6.2.1, 9.3.2, 10.2.1.2, ~~10.2.4~~10.2.4, 11.4.1.4

## Subcontractor, Definition of

5.1.1

## SUBCONTRACTORS

5

## Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

## Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1

## Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

## Submittal Schedule

3.10.2, 3.12.5, 4.2.7

## Subrogation, Waivers of

6.1.1, 11.4.5, 11.3.7

## Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

## Substantial Completion, Definition of

9.8.1

## Substitution of Subcontractors

5.2.3, 5.2.4

## Substitution of Architect

4.1.3

## Substitutions of Materials

3.4.2, ~~3.5~~3.5.1, 7.3.8

## Sub-subcontractor, Definition of

5.1.2

## Subsurface Conditions

3.7.4

## Successors and Assigns

13.2

## Superintendent

3.9, 10.2.6

## Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

## Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

## Surety, Consent of

9.10.2, 9.10.3

## Surveys

2.2.3

## Suspension by the Owner for Convenience

14.3

## Suspension of the Work

5.4.2, 14.3

## Suspension or Termination of the Contract

5.4.1.1, 11.4.9, 14

## Taxes

3.6, 3.8.2.1, 7.3.7.4

## Termination by the Contractor

14.1, 15.1.6

## Termination by the Owner for Cause

5.4.1.1, 14.2, 15.1.6

## Termination by the Owner for Convenience

14.4

## Termination of the Architect

4.1.3

## Termination of the Contractor

14.2.2

## TERMINATION OR SUSPENSION OF THE CONTRACT

14

## Tests and Inspections

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, ~~11.4.1~~11.4.1.1, 12.2.1, 13.5

## TIME

8

## Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, ~~7.4~~7.4.1, 8.3, 9.5.1, 9.7, ~~10.3.2~~10.4, ~~9.7.1~~10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

## Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, ~~4.4~~4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, ~~11.4.1.5~~11.4.6, ~~11.4.10~~12.2, 13.5, 13.7, 14, 15.1.2, 15.4

## Time Limits on Claims

3.7.4, 10.2.8, 13.7, 15.1.2

## Title to Work

9.3.2, 9.3.3

## Transmission of Data in Digital Form

1.6

## UNCOVERING AND CORRECTION OF WORK

12

## Uncovering of Work

12.1

## Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

## Unit Prices

7.3.3.2, 7.3.4

#### Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

#### Use of Site

3.13, 6.1.1, 6.2.1

#### Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

9.10.5, 11.4.7, 13.4.2, 15.1.6

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1,

13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages

14.2.4, 15.1.6

Waiver of Liens

9.10.2, 9.10.4

#### Waivers of Subrogation

6.1.1, 11.4.5, 11.3.7

#### Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, ~~13.7~~

13.7.1

Weather Delays

15.1.5.2

Work, Definition of

#### 1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5,

9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7,

9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**,

14, 15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2,

14.3.1, 15.1.2

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are ~~enumerated in~~ defined in § 1.1 of the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements. Architect that does not require an adjustment of the Contract Sum or an extension of the Contract Time.~~

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

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

#### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services. Architect, the Architect's consultants, the Contractor, Subcontractors and Sub-subcontractors and vendor or equipment suppliers (individually an "Author" and collectively the "Authors") under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 INITIAL DECISION MAKER Deliberately omitted.

#### § 1.1.9 CONTRACTOR

The term "Contractor" shall mean "Construction Manager" herein.

#### § 1.1.10 APPLICABLE LAW

"Applicable Law" shall mean all laws, statutes, ordinances, codes, rules, regulations or orders applicable to the Project and issued by governmental entity having jurisdiction over the Project.



#### **§ 1.1.11 PROJECT TEAM**

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. "Project Team" consists of the Architect, Contractor and Owner (collectively, the "Project Team" and, individually, a "Project Team Member"), who shall be engaged early in the process to participate in Project Team meetings to provide input from time to time.

#### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, the terms of the documents shall control in the following order of priority: (1) the Agreement, as changed by a Modification (without the Exhibits, except as stated below); (2) the Exhibits attached to the Agreement other than these General Conditions; (3) addenda, with those of later date having precedence over those of an earlier date; (4) the Supplementary and Special Conditions; (5) General Conditions; (6) Division One of the Specifications; and (7) Drawings and Divisions 2 through 16 of the Specifications. If there is a conflict or a discrepancy between the Drawings and Divisions 2 through 16 of the Specifications or within either document, the Architect shall recommend which takes precedence and the Owner shall make the final determination.

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

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

§ 1.2.4 When specific products, systems or items of equipment are specified in the Contract Documents, (i) any ancillary devices necessary for their proper functioning shall be deemed included, whether specified or not unless they are specifically excluded by the Contract Documents and (ii) no manufacturer's options on any specific device shall be included unless specified in the Contract Documents. References to standards, codes, manufacturer's instructions and guarantees shall apply, provided (1) they do not supersede more stringent standards specified in the Contract Documents and (2) all exclusions and waivers therein contained shall not apply if they are inconsistent with the provisions of the Contract Document.

#### **§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined herein or, if not so defined, in the Agreement, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

#### **§ 1.4 INTERPRETATION**

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

#### **§ 1.5 AUTHORIZATION,**

##### **OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

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



publication in derogation of the Architect's or Architect's consultants' reserved rights. Architect, Architect's consultants, the Contractor, Subcontractors of any tier and material or equipment suppliers hereby authorize each other to use and reproduce their respective Instruments of Service solely and exclusively for use in completion of 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. In addition to the limited license granted above, the Authors grant a broader irrevocable, perpetual, royalty-free right and license to the Owner, including its contractors, agents, licensees, consultants, architects, and tenants, to use, incorporate, copy, reproduce, display, distribute, change, modify, alter or prepare other derivative works under the copyrights, and any common law, statutory and other reserved rights in any proprietary information relating to the subject matter of their Instruments of Service in connection with future repairs, maintenance, improvements, alterations, expansions, additions, modifications, or updates to the Project, or reports to governmental or non-governmental authorities with jurisdiction over the Owner and Project; provided, however, the Owner may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants, without the prior written consent of the Author for improvements not physically connected to the Project.

§ 1.5.3 The Author shall be permitted to retain copies, including reproducible copies, of the documents for information and reference. If the Author's services are terminated prior to completion of construction, the Owner shall indemnify and hold the Author and the Author's consultants harmless from any and all costs or claims for damages arising out of use of incomplete documents, any interpretation, revision, alteration or omission of the documents which are not made by the Author or its consultants. Further, should the Owner reuse the documents or any part thereof, the seals and certifications of the Author and Author's consultants shall be invalid, shall not be used and shall be deleted, and the Author and the Author's consultants shall not be liable for any costs of claims for damages arising out of the reuse; provided, however, the Author and the Author's consultants shall be liable (i) if the Author is retained to provide professional services in connection with the reuse or (ii) where the Author is responsible for the accuracy of its Instruments of Service as provided in the respective agreements entered into by the Authors with respect to the services or Work relating to the Project.

§ 1.5.4 Each Author shall obtain licenses from its consultants, Contractor, Subcontractors of any tier and material or equipment suppliers sufficient to grant the licenses set forth above in this Section 1.6.1.

§ 1.5.5 None of the Authors may use the Instruments of Service (except for standard details and the like) for any other project without the specific written consent of the Owner and the Author of the specific Instruments of Service

## **§ 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 endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **§ 1.7 PROJECT TEAM**

### **§ 1.7.1 Function and Purpose of Project Team.**

§ 1.7.1.1 The function and purpose of the Project Team is to endeavor to provide superior value to the Owner over the traditional design and build delivery platforms by collaborating collectively to:

(a) Assist in the Preconstruction Phase in creating a design that meets the Owner's expectations as to functionality, operability, aesthetics, and sustainability, and to build the Project in conformance with that design within the Guaranteed Maximum Price and the Project Schedule;

(b) Facilitate the exchange of information with all participants to provide the most up-to-date, precise and complete information and analysis;

(c) Assist in refining the Project budget using real-time, best-guess costs based on the current knowledge of the Project Team to establish, pursuant to the milestones of the Project Schedule, the final budget for the Project;

(d) Assist in refining the Project Schedule using the Project Team's real-time, best-guess information to finalize the Construction Schedule and Design Schedule to establish the final Project Schedule; and

(e) Assess how BIM will be utilized in the Project and the responsibilities of Project Team Members with respect thereto.

**§ 1.7.2 General Responsibilities of Each Project Team Member.** To achieve the function and purpose of the Project Team stated in Section 1.7.1.1, each Project Team Member shall designate qualified representatives to attend each Project Team meeting, each of whom shall timely provide material information and engage in a productive exchange of information.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

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

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

### **§ 2.2 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. 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. Unless such reasonable evidence is furnished, the Contractor is not required to commence or continue any Work, or may, if such evidence is not presented in a reasonable time, stop the Project upon fifteen (15) days' notice to the Owner.

**§ 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~~ facilities, provided that Contractor shall assist the Owner in timely identifying the required permits and approvals.

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, soil reports and subsurface investigations, and a legal description of the site, site as may be reasonably required by the Contractor. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.4** 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~~ services and the Contractor shall be entitled to rely upon the accuracy and completeness thereof.



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

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

~~If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.~~ § 2.3.1 If the Contractor fails to promptly 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 within seven (7) days after receipt of written notice from the Owner, 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. Contractor shall not have a Claim for the increase in the Cost of Construction or for an extension of the Contract Time if the Work is stopped pursuant to this Section.

§ 2.3.2 If the Owner, in its reasonable judgment, believes that a suspension of the Work is warranted by reason of unforeseen conditions which may adversely affect the quality of the Work if such Work were continued, the Owner may suspend the Work by written notice to the Contractor. In such event, the Contract Time shall be adjusted accordingly and the Contract Sum shall be adjusted by Change Order to the extent, if any, that additional costs are incurred by reason of such suspension. If the Contractor, in its reasonable judgment, believes that a suspension is warranted by reason of unforeseen circumstances which may adversely affect the quality of the Work if such Work were continued, the Contractor shall promptly notify the Owner and the Architect of such belief.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten day Documents, including the failure to timely complete milestones in the Construction Schedule and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. 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 Owner's expenses and compensation for the Architect's or other's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.~~

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. Documents and in accordance with all Applicable Laws.

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

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 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 are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, professional unless otherwise ~~specifically~~ provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with ~~applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. Applicable Law,~~ but the Contractor shall promptly report to the Architect and Owner 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 3.2.3, 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 performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions (except for those field measurements required by the Contract Documents) and the Contract Documents, or for nonconformities of the Contract Documents to ~~applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. Applicable law.~~

§ 3.2.5 The Contractor is not responsible for the sufficiency of the Contract Documents, other than the Agreement and the General Conditions, for their intended purpose.

### § 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 by the Owner 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 resulting 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. Subcontractors, Sub-subcontractors, suppliers, vendors, suppliers and their agents and employees,~~ and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its ~~Subcontractors. Subcontractors Sub-subcontractors, suppliers, vendors, suppliers and their agents and employees~~ Purchase.



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

§ 3.3.4 Dimensions shall be figured rather than determined by scale or rule. Before ordering any materials or performing any Work, the Contractor shall verify all dimensions and check all conditions to assure itself that they properly reflect those set forth in the Drawings. Any inconsistency in dimensions or conditions should be brought to the attention of the Architect and Owner. In the event that discrepancies occur between the ordered materials and actual conditions, the cost to correct such discrepancies shall be borne by the party responsible for the error.

#### § 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 The Contractor shall make good faith efforts to inform the Owner and Architect of any value-engineering alternatives during the term of the Project. If the Owner approves, the Architect shall consider incorporation of such value-engineering alternatives, including the substitution of products, equipment or systems, at any time during the Project. In presenting such alternatives, the Contractor shall provide to the Owner and Architect a description of the alternate along with the standard product or system information to help in their evaluation of the alternative. Upon the request of the Owner or Architect, Contractor shall obtain any additional information that they feel is necessary for their evaluation of the proposed alternative. Based on the available information, the Contractor shall submit to the Owner and Architect the cost and schedule impact of the alternative. Any alternative approved by the Owner shall be processed by a Change Order. The Contractor shall incorporate changes related to the approved alternatives according to the associated revisions to the Contract Documents, as issued by the Architect.

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

#### § 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and ~~equipment~~ equipment, furnished under the Contract will be of good quality and new unless ~~the Contract Documents require or permit otherwise, otherwise specifically required by the Contract Documents.~~ 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. In addition, any unauthorized substitutions of materials or equipment 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, modifications not executed by the Contractor or any person or entity for which Contractor is responsible,~~ improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted ~~when bids are received or negotiations concluded, at the time all of the bids have been accepted,~~ whether or not yet effective or merely scheduled to go into effect, except for sales taxes on items that may be purchased sales-tax exempt as permitted under Wis. Stats. §77.54(9m) (2013-14) as may be modified, renumbered or amended from time to time.

**§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**  
**PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS**

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to ~~applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.~~ 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 (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observation of the conditions. ~~The Architect-Owner will promptly investigate such conditions and, if the Architect-Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend the Owner and Contractor shall agree upon an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect-Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in~~ Contractor may assert a Claim under Article 15.

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

**§ 3.8 ALLOWANCES**

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 ~~Allowances~~ 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~~ whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable ~~promptness.~~ promptness, provided if an early decision is required to avoid a delay in the Work, the Contractor shall notify the



Owner and the Architect in writing of the deadline in sufficient time to permit the Owner to make a reasoned decision..

### **§ 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. All communications (a) affecting the Contract Sum, Contract Time, Contractor's Contingency, Construction Schedule (or milestones therein) or a material term of the Contract or (b) involving a substitution of materials or equipment, shall be in writing. Other communications shall be confirmed in writing by the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection. Contractor shall employ a superintendent, or an assistant to the superintendent, who is knowledgeable in mechanical and electrical systems and can read and interpret the Drawings, Specifications and Shop Drawings pertaining to such systems. That person shall (i) coordinate the Work required by such documents, including, but not limited to, assisting Subcontractors in arranging space conditions so as to eliminate interference between mechanical and electrical systems and other Work, (ii) supervise the installation of the systems in restricted spaces and (iii) assist in planning and expediting the proper sequence of the delivery of the mechanical and electrical equipment to the site.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule detailed critical path construction schedule, including the design schedule ("Construction Schedule") for the Work. The Construction Schedule shall not exceed time limits current under the Contract Documents, shall be revised 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 (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

**§ 3.10.4** If the Work has not progressed or reached the level of completion required by the Contract Documents and, in particular, the Construction Schedule, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the process of the Work, including, but not limited to, working additional shifts or overtime, supplying additional manpower, equipment and facilities and similar measures, but, in any event, only to the extent caused by the fault of the Contractor. The corrective 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 such corrective measures is solely for the purpose of obtaining the Contractor's compliance with the Construction Schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with the corrective measures; provided, however, if the Contractor is only partially at fault, the cost of the corrective measures shall be equitably shared to reflect the relative culpability of the Contractor and other parties for the delay, provided that delays caused by Subcontractors shall be considered delays caused by the Contractor.

### § 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 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.

### § 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.

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved ~~them~~, them as provided in § 3.12.5, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor represents that all Shop Drawings shall be prepared by persons or entities having experience and expertise in the trade for which the Shop Drawings are prepared and, if required by the Contract Documents and Applicable Law, by a licensed engineer.

§ 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 (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval ~~thereof~~, thereof, except for error and omissions which are within the Architect's design responsibilities.

§ 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 law~~. Applicable Law. 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.

**§ 3.12.11** The Contractor shall assemble for the Architect's approval and for transmittal to the Owner three (3) complete copies, with loose-leaf binders, and an electronic version of all operating and maintenance data, warranties, instructions and manuals from all manufacturers whose equipment is installed in the Work. The Contractor shall prepare for the Owner a detailed list of operation and maintenance requirements in accordance with the manufacturer's standard requirements.

### **§ 3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by ~~applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities~~. Applicable Law and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Materials and equipment, other than attic stock per the Drawings and Specifications, that is no longer required for the Work shall be promptly removed from the Project site.

### **§ 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.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall promptly remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor; the cost thereof shall be charged to the Contractor by deductive Change Order. Unless covered by builder's risk insurance or unless attributable to separate contractors not under contract to the Contractor or its Subcontractors, the Contractor shall be responsible for broken glass and, at the completion of the Work, shall replace such damaged or broken glass. After broken glass has been replaced, the Contractor shall remove all labels, wash and polish interior sides of all glass surfaces. In addition to general

broom cleaning, the Contractor shall perform the following final cleaning for all trades at the completion of the Work, including, but not limited to: (a) remove temporary structures; (b) remove spots, mortar, plaster, soil and paint from finished materials and wash or wipe clean; (c) clean fixtures, cabinetwork and equipment, removing stains, paint, dirt and dust and leave in undamaged, new condition; (d) clean aluminum in accordance with the recommendations of the manufacturer; and (e) clean resilient floors thoroughly with a well-rinsed mop containing only enough moisture to clean off surface dirt or dust and buff-dry by machine to bring surfaces to sheen.

#### **§ 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 hold the Owner and Architect harmless from 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 and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that which~~ would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 3.18.3** The Owner shall cause any other contractor who may have a contract with the Owner to perform construction or installation Work in the areas where Work will be performed under the Owner/Contractor Agreement, to agree to indemnify the Owner and Contractor and hold them harmless from all claims for bodily injury and property damage that may arise from that contractor's operations. Such provisions shall be in a form satisfactory to the Contractor

**§ 3.18.4** The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

### **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 advise and consult with the Owner and provide administration of the Contract as described in the Contract Documents ~~and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment, during construction until the final Certificate for Payment is issued and, at the Owner's direction, from time to time during the two-year period for correction of the Work described in § 12.2.2.~~ The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, ~~and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.~~ ~~Documents and to keep the Owner informed and endeavor to guard the Owner against defects and deficiencies in the Work.~~ 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 (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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 observations and 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~~ With the Owner's prior written consent in each instance, the Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or ~~advisable, advisable~~ and with the Owner's prior written consent, 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 to cause no delay in the Work 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; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The 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 performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Deliberately omitted.~~

§ 4.2.12 ~~Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith. Deliberately omitted.~~

§ 4.2.13 ~~The Architect's decisions~~ Architect will make its recommendations to the Owner on matters relating to aesthetic effect will be final if, which recommendations shall be consistent with the intent expressed in the Contract Documents.

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who 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 award of the Contract, 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-Owner~~ may reply within 14 days to the Contractor in writing stating (1) whether the Owner ~~or the Architect~~ has reasonable objection to any such proposed person or entity or (2) that the ~~Architect-Owner~~ requires additional time for review. Failure of the Owner ~~or Architect~~ to reply within the ~~14-day-14 day~~ period shall constitute notice of no reasonable objection.

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

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

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

§ 5.2.5 If a previously approved Subcontractor acts in a manner that interferes with Owner's operations, violates Owner's policies or acts inappropriately, the Contractor shall remove that Subcontractor within twenty (20) days after written notice from the Owner.

## § 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 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, 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. The Contractor shall require each Subcontractor to enter into similar agreements with its Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, redacted 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.

§ 5.3.2 In addition to the foregoing, each such subcontract agreement shall, in any event: (a) require that such Work be performed in accordance with requirements of the Contract Documents; (b) waive all rights that the contracting parties may have had 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 the Contract Documents; (c) require a Subcontractor to carry and maintain liability insurance in accordance with the provisions of the Contract unless otherwise agreed to between the Owner and Contractor; (d) require a Subcontractor to furnish such insurance certificates and policies as Owner may reasonably request; (e) require a Subcontractor to comply with any safety plan required by Contractor; and (f) require a Subcontractor to comply with the Owner's policies and procedures.

#### **§ 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~~ subcontract but shall not be liable for any breach of the subcontract prior to the effective date of the assignment.

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

**§ 5.4.3** Upon 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 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. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

**§ 6.1.3** ~~The Owner shall provide for coordination of Contractor shall assist the Owner in scheduling the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules, coordinating their activities with the Construction schedule.~~ The Contractor shall make any revisions to the ~~construction schedule~~ Construction Schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

**§ 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,~~ forces or separate Contractors, 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.



## § 6.2 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. All such costs shall be paid by Change Order, as applicable.

§ 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.

## § 6.3 OWNER'S RIGHT TO CLEAN UP

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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

§ 7.1.3 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.

### § 7.2 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~~; Sum, provided that there shall be no increase in the cost of the General Requirements unless the Contractor provides evidence to the reasonable satisfaction of the Owner that such additional costs are actually and directly incurred because of the Change Order; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 In determining adjustments to the Contract Sum, Section 7.3.3 shall apply.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on ~~one of the total sum of the following methods:~~ the following:

- ~~.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;~~ the Cost of the Work as defined in Article 6 of the Owner/Contractor Agreement for the Change in the Work;
- ~~.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 an increase in the cost of the General Requirements if the Contractor provides evidence to the reasonable satisfaction of the Owner that such additional costs are actually and directly incurred because of the Construction Change Directive and;~~
- ~~.4 As provided in Section 7.3.7.3~~ the Contractor's Fee as described in Subparagraph 5.1.2 of the Owner/Contractor Agreement

§ 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.

§ 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 Contract Time.

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, ~~the Architect shall determine 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 as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data, in writing within five (5) days after receipt of the Construction Change Directive, the Construction Change Directive shall be deemed accepted. If the Contractor disagrees in writing during that time, the matter shall be submitted as a Claim under the dispute resolution provisions of the Contract.~~ Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the ~~change~~ change and actually incurred by the Contractor.



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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. ~~The Architect will make an interim determination for purposes of monthly certification for payment for these costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15. shall perform the Work described in the Construction Change Directive and amounts not in dispute shall be included in Applications for Payment. Such Work and request for payment shall not prejudice the Claim the Contractor submits hereunder.~~

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

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has 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 will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

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

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

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, ~~except by agreement or instruction of the Owner in writing, 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.

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

#### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation ~~and arbitration; or by other causes that the Architect determines may justify delay, or litigation~~ then the Contract Time shall be

extended by Change Order for such reasonable time as ~~the Architect may determine.~~ the Owner and Contractor agree, or pursuant to the order of the Court in which the litigation is commenced.

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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. Wherever the term "Contract Sum" appears throughout the Contract Documents it shall be deemed to mean "Guaranteed Maximum Price".

### § 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.~~ The Contractor shall submit to the Architect and Owner, 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 or Owner may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 ~~At least ten days before the date established for each progress payment, Pursuant to the requirements of the Agreement,~~ the Contractor shall submit to the Architect and Owner an itemized Application for Payment for all of the Costs of the Work for the prior month, prepared in accordance with the schedule of values, ~~if required under Section 9.2,~~ for completed portions of the Work. Any Costs of the Work not submitted within 60 days of being incurred shall be deemed waived. 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.~~ waivers of liens and shall reflect retainage.

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

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the ~~Owner,~~ Owner in writing, 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.~~ equipment, insurance coverage or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

## § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's properly completed Application for Payment, with all required back-up, 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~~ Work, observations at the Project site 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 (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The provisions for payment and Certificates for Payment are solely for the benefit of the Owner and neither the Contractor nor any other third party (including sureties of the Contractor) shall have a cause of action of any kind or under any theory of law or equity against the Owner, the Architect, or anyone acting on behalf of either of them for waiving or misapplying these provisions, except to the extent payments are not timely made, as provided hereunder, as a result of waiving or misapplying these provisions.

## § 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 will~~, within seven (7) days of receipt of the Application for Payment, notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and ~~Architect~~ Owner 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 Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents. Documents after a written warning and failure to cure within ten (10) days, or such longer reasonable time if the cure cannot be accomplished in ten (10) days, as long as the action to cure is made continuously and diligently.

§ 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 Contractor and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, 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 (7) 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 (7) 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. If the Contractor has been paid for the Work of a Subcontractor but has not paid that Subcontractor by the time of the next Application for Payment, such money shall be re-credited to the Owner in such subsequent Application for Payment. In the absence of a bona fide good faith dispute with the Subcontractor, the Owner reserves the right, but not the obligation, to pay that Subcontractor directly on behalf of the Contractor. In the event any action is commenced against the Owner by the Subcontractor, or if the Subcontractor files a lien against the Project site, the Owner shall tender the defense of such action or lien to the Contractor, who shall timely accept such defense in writing and who shall hold the Owner harmless therefrom. The Contractor shall immediately take such action as may be required by Section 779.08 of the Wisconsin Statutes (2013-2014), as the same may be amended or renumbered from time to time, to remove any lien.

§ 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 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing Other than as required by Applicable Law, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. Contractor acknowledges that it is aware of the provisions of Sections 779.02(5) and 779.16 of the Wisconsin Statutes (2013-2014), as the same may be amended or renumbered from time to time, relating to theft by contractors.~~

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) 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 (7) additional days' written notice to the Owner and

Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. Contractor shall continue to Work until the Claim is resolved. Any amounts determined or agreed to be due and owing to the Contractor shall be paid with interest from the due date to the date of payment.

#### **§ 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~~ and utilize the Work for its intended use, which shall be evidenced by the issuance of a Certificate of Substantial Completion and, where required by Applicable Law, an occupancy permit, provided, however, the requirement for an occupancy permit shall be waived if the delay in obtaining such permit is the result of the Owner, or anyone for whom the Owner is responsible, failing to timely act to obtain the permit.

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

**§ 9.8.3** ~~Upon~~ Within ten (10) days of receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion, which shall be at the Contractor's cost.

**§ 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. Documents by withholding the amount of one hundred and fifty percent (150%) of the cost to complete the remaining Work.

#### **§ 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~~. withheld, delayed or conditioned. 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 through the claims process.



§ 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~~, upon in writing, 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 (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) 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, (4) consent of surety, if any, to final payment and (5), if required by the Owner, payment, (5), 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, (6) delivery of the as-built Drawings to the Architect, showing all construction modifications to them, (7) the warranties, instructions and maintenance manuals required to be furnished under the Contract and (8) a final statement of the Cost of the Work with a breakdown according to the construction budget and in a form approved 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; or
- .3 terms of special warranties required by the Contract Documents.

§ 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.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor 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, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities~~ Applicable Laws 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 Contract, reasonable 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 reasonable measures necessary to protect any property improvements adjacent to the Project. Any damage to such property improvement that is caused by the Contractor shall be promptly repaired by the Contractor

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

§ 10.2.4.1 When use or storage of explosives are necessary, the Contractor shall give the Owner reasonable advance written notice of the use or storage and shall provide written notification to local fire officials and any governmental agencies with authority over such explosives as may be required by Applicable Law or any safety plan required by Contractor or Owner.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, 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 construction or site to be loaded so as to cause damage or create an unsafe condition. All equipment used on the Project shall be handled and operated in conformance with OSHA safety requirements.

§ 10.2.8 The performance of the foregoing services by the Contractor shall not relieve the Subcontractors of their responsibilities for the safety of persons and property and for compliance with all Applicable Law concerning the conduct of the Work.



#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

When required by Applicable Law or for the safety of the Work or adjoining property, the Contractor shall shore up, brace, underpin and protect the foundations and other portions of the existing structures which are in any way affected by the Work. The Contractor, before commencement of any part of the Work, shall give any notice required to be given under Applicable Law to adjoining landowners or other parties. 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 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. Hazardous materials such as asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances shall not be allowed on the site nor be used in the Work (except for materials commonly used on construction projects as may be allowed by Applicable Law or required by the Contract Documents). The Contractor is responsible for hazardous materials encountered at the Site which are: (i) specifically identified by type and location in the Contract Documents to be part of the Work, (ii) brought to the Project site by Contractor or its Subcontractors and not required by Contract Documents, or (iii) negligently handled or stored by Contractor or its Subcontractors. The Owner is responsible for other hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

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

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances ~~the Contractor brings to the site unless such materials or substances are required by the Contract Documents, for which the Contractor is responsible under § 10.3.1.~~ 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.



**§ 10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and Contractor is responsible for the same thereunder except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity

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

#### **§ 10.4 EMERGENCIES**

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

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 CONTRACTOR'S 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 such insurance as will 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 a Subcontractor 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 explosion, collapse, underground hazards and damage to underground utilities and 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; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

**§ 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 below~~ or required by law, ~~whichever coverage is greater, as applicable.~~ Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The general commercial liability and umbrella coverage shall include contractual indemnity and consequential damage coverage for property damages and bodily injury coverage at the limits shown below. Insurance coverage shall be maintained for three years after the date of Substantial Completion. Insurer's must have a Best's Insurance Reports rating of at least "A" and a Financial Size Category of no less than "Class VI" and are authorized as an admitted insurance company in the State of Wisconsin. The minimum insurance requirement is as follows:

a. Commercial General Liability:

General aggregate limit

(other than Products-Completed Operations): \$2,000,000 per project

Products-Completed Operations \$1,000,000 (aggregate) per project

Personal and Advertising Injury \$1,000,000

Each Occurrence Limit \$1,000,000

b. Auto liability:

Combined single limit per accident \$1,000,000 (coverage at least as broad as Insurance Services Office Form

97, provided #CA 00 01 07

1-Any auto on a Symbol basis)

c. Worker's Compensation and Employer's Liability:

Per statute with sufficient limits to meet umbrella liability insurance requirements

d. Umbrella Liability providing coverage at least as broad as the underlying General Liability, Automobile liability and Employer's Liability

Each occurrence \$2,000,000

Aggregate \$5,000,000

§ 11.1.2.1 Any additional perils coverage or policy form necessary to comply with the requirements of Contractor's bonding company.

§ 11.1.2.2 Covered property shall include property in transit and property stored on or off the Project Site.

§ 11.1.3 Certificates of insurance and policies 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 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds Owner, its elected officials and employees as an additional insured and the Architect Architect's Consultants and Subcontractors as loss payees as their interest may appears for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner 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. Such additional insureds' coverage shall be primary and non-contributory with any other liability insurance maintained by the Owner.

§ 11.1.5 Insurance shall be placed with insurers having a Best's Insurance Reports rating of no less than A and a financial size category of no less than Class V, admitted and authorized by the State of Wisconsin to provide coverage.

§ 11.1.6 Subcontractors shall have the same insurance limits and coverage as the Contractor, provided Contractor may request the Owner to waive certain coverages and lower insurance limits in its sole discretion.



## § 11.2 OWNER'S LIABILITY INSURANCE

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

**11.2.2** If Owner hires separate contractors to perform work for, or in or around, the Project, it shall include in its contracts with each separate contractor the following provisions: Contractor and its officers, directors, partners, members, employees and agents shall be (i) named as an additional insureds on a primary, non-contributory basis to any commercial general liability, pollution liability and excess liability insurance policies and (ii) provided a waiver of subrogation on all workers compensation and professional liability insurance policies.

**11.2.3** Deliberately omitted

## § 11.3 PROPERTY INSURANCE

**§ 11.3.1** ~~Unless otherwise provided, the~~ The Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and the cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include ~~interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project as~~ named or additional insureds.

**§ 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, boiler and machinery, earthquake, flood, windstorm, falsework, testing and startup, equipment breakdown, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 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.~~ Deliberately omitted.

**§ 11.3.1.3** If the property insurance requires deductibles, the Owner shall pay the costs not covered due to deductibles because of such deductibles.

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### **§ 11.3.2 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; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.~~**BOILER AND MACHINERY INSURANCE** Deliberately omitted (see Sec 11.3.1.1)

### **§ 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~~ action against the Contractor-Construction Manager for loss of use of the Owner's ~~property, including consequential losses due to fire or other hazards however caused.~~ property to the limits of the insurance carried.

**§ 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 Work, or if after Substantial Completion of the Work (or a designated portion thereof)~~ property insurance is to be provided on the completed ~~Project Work (or designated portion thereof)~~ through a policy or policies other than those insuring the ~~Project during the construction period, Work (or designated portion) prior to Substantial Completion,~~ 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. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to ~~expire, and that expire and~~ its limits will not be reduced, reduced until at least 30 days' prior written notice has been given to the Contractor. Owner's obligation to provide any insurance policy is contingent upon Contractor signing a confidentiality agreement, agreeing to keep confidential the terms and conditions of such insurance policy or policies provided to Contractor by Owner.

### **§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the ~~other, other~~ and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such ~~insurance held by the Owner as fiduciary insurance.~~ The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The waiver requirements in this paragraph apply to, but are not limited to, insurance coverage provided by private sector insurers and self-insured contractors or corporations.

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner ~~as fiduciary and made payable to the Owner as fiduciary for the insureds, and any other insured,~~ as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. 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,~~ written agreements shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.



**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7. Deliberately omitted.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with its insurers unless one of the parties another party in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if the Owner's notice of intent to exercise of this power. If such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, as provided in Article 15. The Owner shall, in the case of litigation or arbitration, make settlement with insurers in accordance with the directions of the arbitrators, court or arbitrator.

**§ 11.3.11** The Contractor and its Subcontractors (collectively, the "Contractor Group") shall secure, pay for and maintain whatever fire or extended coverage insurance the Contractor Group may deem necessary to protect them against loss of owned, rented, borrowed or used capital equipment and tools, including any tools owned by mechanics, any tools, equipment, scaffolding, construction trailers and their contents, stages, towers and forms owned, rented, borrowed or used by the Contractor Group. The requirements to secure or maintain such insurance are solely for the benefit of the Contractor Group. Failure of the Contractor Group to secure such insurance or to maintain an adequate level of coverage shall not obligate the Owner, Architect or the Architect's consultants or their agents and employees for any losses of owned or rented equipment. If uninsured or underinsured, the Contractor Group, the Owner, Owner's Consultant and Architect are not responsible for loss or damage to the Contractor Group's tools or equipment.

## **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish 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.

**§ 11.4.2** 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.

**§ 11.4.3** Deliberately omitted.

## **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, Documents or by Applicable Law, it must, if requested in writing by the Owner or Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect Architect, after prior written approval of the Owner, may request 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

### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within ~~one year~~ two years 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 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 Owner shall give such notice promptly after discovery of the condition. During the ~~one year~~ two-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

§ 12.2.2.3 The ~~one year~~ period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. ~~Deliberately omitted.~~

§ 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 ~~one year~~ two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Unless waived by the Owner, the Contractor, Architect and the Owner shall meet eleven (11) months after the date of Substantial Completion to review the Work and identify any problems arising in connection with the Work.

## § 12.3 ACCEPTANCE OF NONCONFORMING WORK

~~If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.~~ § 12.3.1 If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

§ 12.3.2 No course of conduct or dealings between the parties, no express or implied acceptance of alterations or additions to the Work (except a fully-executed Change Order), and no claim that the Owner has been unjustly



enriched by any alteration or addition to the Work (whether or not there is in fact any such unjust enrichment) shall be the basis for any claim for an increase in the Contract Sum or extension of the Contract Time.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located ~~except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ internal law of the State of Wisconsin without application of conflicts of law.

### **§ 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. The Owner may also, without the consent of the Contractor, assign the Contract to an affiliate as long as it remains liable for the obligations of the Owner hereunder. The Contractor shall execute all consents reasonably required to facilitate such assignment. ~~assignments.~~

### **§ 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.~~ Deliberately omitted.

### **§ 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, thereunder,~~ 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, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities.~~ Applicable Law. 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 (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations 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.

§ 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 legal rate prevailing from time to time at the place where the Project is located.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, 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 law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days the respective periods set forth below through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be ~~stopped~~; stopped (120 days);
- .2 An act of government, such as a declaration of national emergency that requires all Work to be ~~stopped~~; stopped (120 days);
- .3 Because the Architect has not ~~timely~~ issued a Certificate for Payment and ~~has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, Owner has not advanced the requested funds pending issuance of a Certificate of Payment, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; Documents (25 days from the receipt of a properly completed Application for Payment with all back-up); or~~
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section ~~2.2.1-2.2.1~~ (45 days).

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work ~~executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages properly executed to the date of termination plus the Contractor's Fee thereon and one-half of the profit it would have made from the Contract for the remaining term of the Contract from the date of termination.~~

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract

with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### **§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 ~~repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or~~ disregards Applicable Laws; or
- .4 otherwise is ~~guilty of in~~ substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~ may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' 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 the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be ~~certified by the Initial Decision Maker, upon application, determined by the Owner, subject to the dispute resolutions provisions of the Contract~~ and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include ~~profit, additional Contractor's Fee based on the amount of the increase in the Contract Sum.~~ No adjustment shall be made to the extent

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

#### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without ~~cause, cause by written notice to the Contractor.~~ Upon any such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits on account thereof, and, as the sole right and remedy of Contractor, Owner shall pay Contractor in accordance herewith. The provisions of the Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after termination to the extent provided in such provisions.



- .1 Upon receipt of any such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the Work on the date and to the extent specified in the notice; place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary to complete such portion of the Work as is not discontinued; promptly make every reasonable effort to procure cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of the discontinued portion of the Work and, therefore, to the extent such cancellation was achieved, shall only do such Work, as may be necessary to preserve and protect Work already in progress, to protect materials, plant and equipment on the Project site or in transit thereto and to complete such Work related to subcontracts that cannot be cancelled.
- .2 Upon such termination, the obligation of the Contractor shall continue as to portions of the Work already performed and as to bona fide obligations assumed by Contractor prior to the date of termination.
- .3 Upon termination, the Contractor shall be entitled to be paid in full for all Work properly done by the Contractor to the date of termination not previously paid for, less sums already received by Contractor on account of the portion of the Work performed and all costs incurred by the Contractor in complying with the termination notice. If at the date of such termination Contractor has properly prepared or fabricated off the Project site any goods for subsequent incorporation into the Work, and if Contractor delivers such goods to the Project site or to such other place as the Owner may reasonably direct, then Contractor shall be paid for such goods and materials. Contractor shall also be entitled to such portion of its fee as is authorized by the Contract.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders, unless the Owner wishes to assume the same, and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed, and reasonable costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## 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, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

~~Claims by either the Owner or Contractor must.~~ Claims by Owner may be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. ~~Claims by either party must be initiated within 21 days after Contractor and may be made at any time prior to the expiration of the applicable statute of limitations for such Claim. Claims by the Contractor or Architect must be initiated by written notice within 21 day after the occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes-recognizes, or should have recognized, the condition giving rise to the Claim, whichever is later. Notwithstanding the foregoing, the parties may agree in writing to extend the time of noticing a Claim. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~

#### § 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, 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 Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

#### **§ 15.1.6 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.

**§ 15.1.6.1** The Contractor hereby waives consequential damages against the Owner arising out of or relating to this Contract. This waiver includes 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 arising directly from the Work or from termination of the Contract.

**§ 15.1.6.2** In the event of a breach of the Contract, the Contractor shall be liable to the Owner for consequential damages up to an amount that is equal to the minimum amounts of general liability and umbrella insurance required to be carried by the Contractor. For purposes of the Contract, "consequential damages" shall mean damages incurred by the Owner for rental expenses; loss of use, income that exceeds expenses, financing, business and reputation; increase in the cost of insurance, consultant fees, expert fees, relocation costs; and/or loss of management or employee productivity or of the services of such persons.

This waiver is applicable, without limitation, to all consequential damages due to the Owner's termination of the Contractor 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.

#### **§ 15.1.7 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS**

If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. If such concealed or unknown conditions are discovered, then the Contract Sum and/or Contract Time will be equitably adjusted. No adjustment in the Contract Sum or Contract Time shall be permitted in connection with a concealed or unknown condition that does not materially differ from those conditions previously disclosed to Contractor, from those ordinarily found to exist and generally recognized as inherent in



construction activities of the character provided for in the Contract Documents or those discovered by Contractor's prior inspections, tests and reviews of the Project site.

#### **§ 15.1.8 ALTERATION OR ADDITION TO WORK**

Other than Work for which a Claim has been filed, no change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or change in the Contract Time unless and until such alteration or addition has been authorized either by: (1) a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents; (2) a written authorization by Owner's Representative specifically authorizing same, or (3) in the case of Work for which a Claim has been filed, by mutual agreement or by a final and non-appealable order from an arbitrator or a court. This requirement is of the essence of the Contract Documents. Accordingly, there shall be no increase in the Contract Sum or extension of the Contract Time permitted if the above procedure is not followed, including, but not limited to, Claims based on course of conduct or dealings between the parties, express or implied acceptance of alterations or additions to the Work, and a claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment.

#### **§ 15.1.9 UNIT PRICES**

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 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.

#### **§ 15.2 INITIAL DECISION** ~~Deliberately omitted~~

**§ 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 mediation of any Claim arising prior to the date final payment is due, unless 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: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding



on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 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 law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION Deliberately omitted

§ 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 mediation as a condition precedent to binding dispute resolution.

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

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 15.4 ARBITRATION

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

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

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



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

~~§ 15.4.4 CONSOLIDATION OR JOINDER~~

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

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

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

**EXHIBIT F**

**To**

**Request for Proposals from Construction Managers for a  
Municipal Garage by the Village of Little Chute, WI**

**A-133 - Construction Manager Contract**

**(attached)**



# 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 **2016**  
(In words, indicate day, month and year.)

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

Village of Little Chute  
108 West Main Street  
Little Chute, WI 54140

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

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

Construction of a new municipal garage in the Village of Little Chute to service the needs of the Departments of Public Works and Parks, Recreation and Forestry Department of approximately 44,500 square feet (or less given efficient design inputs) with the facilities generally described in the Preliminary Scope Overview dated as of January 14, 2016 attached hereto as **Exhibit A** provided the Village reserves the right to separately install the Salt Storage Building, Cold Storage Building, Yard Waste Site and Material Storage Bins (collectively the "Independent Facilities") after design development is completed, with an approximate total value of \$1,000,000. The Preliminary Scope is subject to modification through the design and budgeting process. The maximum construction budget for this project is \$5,000,000 (collectively, the "**Project**"). A preliminary geotechnical investigation report has been prepared for this site and an adjoining property. This report is dated January 19, 2012 and has nine boring locations within the proposed development limits. This report is attached as **Exhibit B**. The Architect will be responsible for determining the suitability of the Project site and shall engage consultants, such as engineers and surveyors to prepare final geotechnical reports and surveys.

The Architect:  
(Name, legal status and address)

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

James Fenlon  
Village Administrator  
108 West Main Street

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

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

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

Little Chute, WI 54140

Email address: [James@littlechutewi.org](mailto:James@littlechutewi.org)

Telephone: (920) 423-3850

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

1

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

The Owner and Construction Manager agree as follows.



## **TABLE OF ARTICLES**

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

## **EXHIBIT A — GUARANTEED MAXIMUM PRICE AMENDMENT**

### **ARTICLE 1 GENERAL PROVISIONS**

#### **§ 1.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to 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 (defined below) 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 or contemporaneous negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. The Request for Proposal dated \_\_\_\_\_ is attached hereto as Exhibit C and the Contractor's response dated \_\_\_\_\_ is attached to this Agreement as Exhibit D and their terms, to the extent the terms contained therein are supplementary and not contradictory to the terms herein, will be deemed to be part of the terms herein.

#### **§ 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; In performing the Contract, the Construction Manager shall utilize the Construction Manager's Capabilities (defined below) to (a) furnish efficient construction administration, management services and supervision; to supervision; (b) furnish at all times an adequate supply of workers and materials; and materials and qualified workers who have sufficient experience to carry out their duties and will commit sufficient time to the Project to meet the milestones identified in the Construction Schedule (defined below); and (c) use its best efforts 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.

### **§ 1.3 General Conditions**

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, as modified (the "A201-2007"), attached hereto as Exhibit D, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, ~~which document is incorporated herein by reference, the A201–2007.~~ The term "Contractor" as used in A201–2007 shall mean the Construction Manager. The term "Contract Sum" as used in the General Conditions shall mean GMP Amendment No. 1, as may be modified as provided herein.

### **§ 1.4 Owner's Representative**

The Owner's Representative shall have the authority to bind the Owner with regard to all matters involving the Contract Documents and multiple signatures are not required. Owner shall provide at least twenty (20) days written notice to Construction Manager before changing the Owner's Representative. The Owner or Owner's Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the Work of the Construction Manager. The term "Owner" in this Agreement means the Owner or the Owner's Representative.

### **§ 1.5 Construction Manager's Representative**

The Construction Manager's Representative shall have the authority to bind the Construction Manager with regard to all matters involving the Contract Documents and multiple signatures are not required. Construction Manager shall provide at least twenty (20) days written notice to Owner before changing the Construction Manager's Representative. The Construction Manager or Construction Manager's Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the timely performance of the Owner's responsibilities or in meeting the milestones in the Project Schedule. The term "Construction Manager" in this Agreement means the Construction Manager or the Construction Manager's Representative.

### **§ 1.6 Key Personnel**

The following persons assigned to this Project by the Construction Manager are considered to be key personnel ("Key Personnel") for the success of this Project and shall not be replaced unless they are no longer in the employment of the Construction Manager or are seriously ill or injured. Any person replacing someone identified as a one of the Key Personnel shall have equivalent experience and skills of the person they are replacing and shall be approved by the Owner, which approval shall not unreasonably be withheld, conditioned or delayed. The Key Personnel and their positions are as follows:

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The Owner may request the removal of any of the Construction Manager's employees or its Subcontractor's employees if it is reasonably dissatisfied with their performance or if they act or dress in a way that the Owner deems improper or offensive. The Construction Manager shall promptly replace, or cause the replacement, of such employee unless it has a material reason for not doing so, which reason shall be provided to the Owner. A breach of this § 1.6 shall be considered a material breach of the Agreement.

### **§ 1.7 Construction Manager's Knowledge, Experience and Resources**

The Construction Manager represents that it has the following knowledge, experience and resources to fulfill its obligations under the Contract Documents:

- .1 sufficient human and computer resources to furnish efficient construction and business administration, management and supervision services to timely perform the Work pursuant to the Construction Schedule;
- .2 experience in supervising, constructing and managing projects of a similar size, scope and complexity to the Project in the role of a construction manager;
- .3 experience and knowledge of the building codes applicable to the Project and of the inspection and approval process by the responsible governmental authority;
- .4 knowledge of all laws, statutes, ordinances, rules and regulations applicable to the construction means, methods techniques, sequences and procedures (collectively, the "Applicable Law");
- .5 knowledge of sustainable and green construction means, methods, techniques, sequences and procedures in projects similar in size, scope and complexity to the Project;
- .6 knowledge of LEED certification and standards; and



.7 knowledge of and experience in implementing lean concepts in projects similar in size, scope and complexity to the Project (collectively, the "Construction Manager's Capabilities").

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager acknowledges that the Project is to be designed and built using a Project Team delivery model. In connection with such delivery model, the Construction Manager acknowledges that it shall be a member of the Project Team and agrees to perform its Work as a Project Team Member whenever required by the A021-2007A295 General Conditions.

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. In addition, to the extent such provisions are supplementary and not contradictory to this Agreement, the RFP dated \_\_\_\_\_, attached hereto as Exhibit E and Construction Manager's Response dated \_\_\_\_\_, attached hereto as Exhibit F, such provisions will be deemed a part of the Construction Manager's Pre-Construction and Construction Phases responsibilities. The Construction Manager acknowledges that this is a fast-tracked Project. The Construction Manager shall provide written recommendations to make the fast track process efficient, such as availability and timely procurement of materials, deliveries, constructability issues, provision of temporary facilities and the like.

### § 2.1 Preconstruction Phase

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

### § 2.1.2 Consultation Team Approach

The Construction Manager shall schedule and conduct meetings with the Architect and Owner weekly meetings with the Architect, Owner and material Subcontractors (as needed), (the "Project Team") to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect designate a person to represent it in the Project Team who shall be knowledgeable about the Project and shall be committed to attending all of the Project Team meetings. That person shall provide recommendations to the Project Team 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. That person shall also advise the Project Team on proposed site use and improvements, selection of materials, and building systems and equipment. The Architect will continually update its design and specifications, which shall be presented to the Project Team at the weekly meetings. The Construction Manager shall continually update and refine the Project budget and present it to the Project Team at each meeting. The Project Team shall use the Project Team approach to deliver the Project efficiently and at the best cost by eliminating the need for Change Orders and Requests for Information during construction and by closely controlling costs on a weekly basis. The Construction Manager shall incorporate BIM into the construction process to the extent it adds value to the Project, for example, clash detection. The Construction Manager shall cooperate with the Architect to coordinate the use and management of BIM into the construction process.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project ~~schedule for the Architect's Schedule~~ (defined below) for the Project Team's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project ~~schedule~~ Schedule relating to the performance of the Architect's services. The Project ~~schedule~~ Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other ~~Owner consultants' services, Owner's Consultants~~ and the Owner's responsibilities and identify items that could affect the Project's timely ~~completion~~ completion ("Project Schedule"). The updated Project ~~schedule~~ Schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of ~~products, materials,~~

equipment and Direct Purchases (defined below), including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

#### **§ 2.1.4 Phased Construction and Construction Schedule**

**§ 2.1.4.1** The Construction Manager shall provide written 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. The Architect shall fast track the design of the Independent Facilities. Prior to the commencement of the Construction Documents Phase, Owner shall notify the Architect and the Contractor, which, if any, of the Independent Facilities that the Owner will install.

~~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.~~

**§ 2.1.4.2** When the Owner has supplied the information required in § 3.1.1, the Construction Manager shall develop and timely update a construction schedule (the "Construction Schedule"), which shall contain the design and construction milestones. The Construction Schedule shall incorporate all elements required to complete the design and construction by the date of Substantial Completion so that the Owner may occupy and use the Project. The Construction Manager shall incorporate the Construction Schedule into the Project Schedule.

#### **§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. The estimates shall include a schedule of values in accordance with Section 7.1.2 hereof. In preparing the estimates, the Construction Manager shall incorporate the concepts of "green" buildings and sustainability, evidence-based design, patient experience, operational efficiency, "LEAN" construction, building information modeling, electronic medical records and Wi-Fi capabilities. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and ~~update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, continuously update~~ the 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 at each Project Team meeting. At the point that the estimates have become sufficiently refined and detailed to create a Guaranteed Maximum Price for the Work, the Construction Manager shall make a Guaranteed Maximum Price Proposal, as provided below. Construction manager shall promptly inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

#### **§ 2.1.6 Subcontractors and Suppliers**

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

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items (other than Direct Purchases) to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care 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, Applicable Law~~, 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**~~Notices and Compliance with Applicable Law~~

**§ 2.1.9.1** The Construction Manager shall comply with Applicable Laws 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 or as directed by the Owner.

**§ 2.1.9.2** In addition to any other requirement of law, Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap in their performance of this Agreement, including, but not 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 apprenticeships. Notices shall be posted in conspicuous places available for employees and applicants for employment setting forth the provisions of this nondiscrimination clause.

**§ 2.1.9.3** Any notices or notifications required from Construction Manager to Owner must be delivered in writing by (1) e-mail with evidence of delivery, (2) personal delivery with evidence of service or (3) overnight delivery by a nationally recognized overnight carrier (next day delivery) with evidence of delivery to the Owner's Representative at the address provided herein. ~~The~~

~~Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.~~ Any notices or notifications required from Owner to Construction Manager must be delivered in writing by (1) e-mail with evidence of delivery, (2) personal delivery with evidence of service or (3) overnight delivery by a nationally recognized overnight carrier (next day delivery) with evidence of delivery to the Construction Manager's Representative at the address provided herein.

Notices shall be deemed to be delivered (i) on the next business day when delivered by email or overnight carrier or (ii) on the same day if delivered personally before 5:00 PM CST.

**§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, 2.2.2, the General Requirements (defined below) and the Construction Manager's Fee.

**§ 2.2.1.1** The "General Requirements" are those costs charged that are not direct construction costs but relate to the management and administration of the Work, such as the rates for the Construction Manager's personnel or the cost of fencing. The Construction Manager shall describe each of elements comprising the General Requirements in detail. Any supervisory or personnel positions not identified in the General Requirements shall be deemed included in the Construction Manager's Fees. Upon acceptance of the Guaranteed Maximum Price, the General Requirements shall not exceed the total amount allocated to this line item unless the Construction Manager can demonstrate that the Work described in a Change Order directly increases these costs, provided, however, the Contract Time and the Contract Sum, including General Requirements, shall be equitably adjusted in the case of a significant change in the Scope of the Work. The Construction Manager's Contingency cannot be allocated to pay additional General Requirements.

**§ 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. The "Construction Manager's Contingency" shall initially be an amount equal to five percent (5%) of the Cost of the Work and shall cover the cost resulting from (a) further development of the Drawings and Specifications by the



Architect consistent with the Contract Documents and reasonably inferable therefrom. Such further development therefrom and consistent with industry standards, (b) unfavorable bidding from Subcontractors, vendors or suppliers, (c) Subcontractor defaults or incorrect performance, (d) costs of corrective Work not provided elsewhere herein, (e) labor disputes, or (f) any other reimbursable Costs of the Work for which a Change Order is not explicitly permitted hereunder, provided however, the Construction Manager's Contingency does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. r The Construction Manager shall provide advance written notice to the Owner of any use of the Construction Manager's Contingency and the reason therefore. The Construction Manager's Contingency shall be for the exclusive use of the Construction Manager for the above purposes but all unused amounts shall be returned to the Owner.

§ 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, provided that none of the assumptions or the clarifications may contradict the requirements of the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee; Fee and General Requirements;
- .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 exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Deliberately omitted.~~

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

§ 2.2.6 The Guaranteed Maximum Price proposal constitutes an offer to contract that may not be withdrawn by the Construction Manager before the date of acceptance has expired. 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, which date shall not be less than thirty (30) days unless the Owner agrees in writing to a shorter time, 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 Amendment, which shall be a completed AIA Document A-133 Exhibit A – GMP Amendment, amending this Agreement (the "Guaranteed Maximum Price Amendment"), a redacted copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed-upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. ~~Amendment, provided however, it is expected that all such assumptions would have been identified previously to the Architect during the Project Team meetings.~~ The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager

shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

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

§ 2.2.10 The Owner is not obligated to accept the Guaranteed Maximum Price Proposal or engage Construction Manager to provide any of the Construction Phase Services.

§ 2.2.11 The Construction Manager shall jointly develop with the Architect a list of all permits and approvals necessary for the construction and occupancy of the Project, including any occupancy permits. The Construction Manager shall have the obligation to prepare all required submittals for the Owner's approval and signature, where necessary, and to timely submit the same. The Architect shall provide any required information on a timely basis. The Architect shall be similarly responsible for any permits or approvals related to the design of the Project. This obligation shall also apply to the Construction Phase of the Project.

### § 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 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. Construction Manager may not self-perform some of the Work with its own forces. All Work shall be done by Subcontractors. The request for bids from Subcontractors shall be publically advertised, sealed bids will be submitted to the Owner and the lowest qualified bidder will be selected as may be required by Applicable Law. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted; however if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The bidders shall deliver their sealed bids directly to the Owner. The Construction Manager shall, unless directed otherwise by the Owner, manage the bidding process, including, but not limited to the following: (a) separating the Work into logical bid divisions, (b) advertising the request for bids, (c) distribution of the bidding documents (d) conducting the pre-bid conferences and (e) making recommendations to the Owner as to the lowest qualified bidder. Unless otherwise directed by the Owner, the Construction Manager shall obtain three (3) competitive bids for a discrete portion of the Work. The Owner may reject all bids and require that portion of the Work to be rebid. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection, if such rejection is permitted by Applicable Law.

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

§ 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.fee.

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

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings not less than weekly with the Project Team to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and ~~Architect~~.Architect

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007. The date for Substantial Completion shall not exceed the date in the Guaranteed Maximum Price proposal.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the ~~Owner~~.Owner, including the status of all subcontracts, material orders, shop drawings, samples and other items material to the Construction Schedule. 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.

§ 2.3.2.9 The administrative and supervisory Work to be performed under this Agreement shall be performed by the Construction Manager's own staff 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 a 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.

§ 2.3.2.10 The Construction Manager assumes the risks and responsibilities of constructing the Work pursuant to the terms of this Agreement and shall take such steps as may be necessary to achieve satisfactory performance from each Subcontractor as set forth in the Contract Documents.

§ 2.3.2.11 If inspectors representing local, state or federal agencies having jurisdiction over the Project shall visit the Project site, the Construction Manager, if possible, shall provide Owner reasonable advance notice of the inspection, accompany the inspectors during their tour through the Project site, and record and report to the Owner the results of the inspections in writing.

§ 2.3.2.12 The Construction Manager shall reasonably secure the Project site in order to protect against potential theft, unauthorized entry and possible injury, vandalism and equipment sabotage. The Construction Manager shall coordinate opening and lockup daily.

§ 2.3.2.13 The Construction Manager acknowledges the high importance that the Owner places on safety. The Construction Manager shall create a safety program for the Project (the "CM's Safety Program"). At a minimum, the CM's Safety Program shall comply with all OSHA requirements. The safety programs of the Subcontractors shall at minimum comply with the standards of the CM's Safety Program. The Construction Manager shall be responsible to monitor, supervise and enforce the implementation of the CM's Safety Program, shall coordinate, monitor, audit and supervise the implementation of the Subcontractors' safety programs, and shall make best efforts to require all other entities or persons who are on the Project site to abide by the CM's Safety Program. The

Construction Manager and its Subcontractors of any tier shall be individually responsible to implement and monitor their respective safety programs in connection with their own employees and their Subcontractors of any tier. All employees, workers, contractors and Subcontractors shall be responsible to cooperate with the Construction Manager to timely resolve any unsafe conditions.

§ 2.3.2.14 The Construction Manager shall not store materials off-site unless the same are fully-insured and the site is secure and bonded. Prior to such storage, the Construction Manager shall provide the location of the storage site and confirm to the Owner that the amount or value of materials stored does not exceed the limitations imposed by the Owner's insurance policies or by its construction lender. Upon delivery of any materials at an off-site storage facility, the Construction Manager shall promptly provide a copy of the storage receipt or similar documents to the Owner.

§ 2.3.2.15 Use of photographs for purposes other than internal Project administration is not permitted without prior written approval of the Owner. The Construction Manager agrees that under all circumstances the Construction Manager will use photographs in a manner that is consistent with the Owner's standards.

§ 2.3.2.16 The Construction Manager shall maintain a competent supervision staff at the site where the Work is being performed for the coordination and direction of the Work.

§ 2.3.2.17 The Construction Manager shall, in conjunction with the Architect, determine that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents. The Construction Manager shall reject Work that the Construction Manager and Architect determine does not conform to the requirements of the Contract Documents.

§ 2.3.2.18 If a subcontractor requires an interpretation of the meaning and/or intent of the Drawings and Specifications during construction, the Construction Manager shall consult with the Owner and Architect to obtain the interpretation in writing, and transmit the interpretation to the appropriate Subcontractor.

§ 2.3.2.19 The Construction Manager shall receive from the Subcontractors and review all shop drawings, product data, samples and other submittals required by the Contract Documents. The Construction Manager shall coordinate them with information contained in related documents and transmit to the Architect those recommended for the Architect's approval. With Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples and other submittals.

§ 2.3.2.20 The Construction Manager shall maintain at the Project site a current marked set of working Drawings and Specifications reflecting "AS BUILT" conditions. Upon completion of construction, the Construction Manager shall turn over these record drawings to the Architect for modification of the original Drawings.

§ 2.3.2.21 After consultation with the Architect, the Construction Manager shall make recommendations to the Owner for such changes in the Work as the Construction Manager may consider necessary or desirable.

§ 2.3.2.22 Construction Manager shall obtain from Subcontractors all necessary operating manuals, equipment manuals, maintenance instructions and parts list for equipment procured as required by the Contract Documents. Upon review and approval, Construction Manager shall submit them to the Owner for its records.

§ 2.3.2.23 The Construction Manager shall review and process all applications by the Subcontractors for progress payments and final payments and make recommendations to the Architect for approval of the applications.

§ 2.3.2.24 The Construction Manager shall submit a written list of all known uncompleted items and items requiring corrective Work to the Architect and the Owner as of the date the Construction Manager notifies the Architect that, in the Construction Manager's opinion, a portion of the Work has achieved Substantial Completion (other than receipt of a temporary or permanent occupancy permit for that portion of the Work, the parties acknowledging that a temporary or permanent occupancy permit will be obtained only when the Work has been Substantially Completed for a particular building). The Architect shall then conduct an inspection of that portion of the Work and, based upon its inspection and the list submitted by the Construction Manager, prepare a punch list itemizing each uncompleted item and items requiring corrective work in that portion of the Work and shall distribute such list to the Owner and the Construction Manager. Other than seasonal items, the Construction Manager shall complete all



punch list items within thirty (30) days after the date of Substantial Completion of that portion of the Work. All in-season items on the punch list shall be completed within thirty (30) days of the earliest date that such in-season items may be commenced. The Construction Manager shall notify the Owner and the Architect as the items on the punch list are completed. If any punch list items cannot be completed within the thirty (30) day requirement after Substantial Completion, the Construction Manager shall notify the Owner and Architect in writing as to the reason and approximate time for completion. If the timing is unsatisfactory to the Owner, the Owner may, at its option, complete such remaining punch list items and charge the Construction Manager for the cost of the same. After thirty (30), but not more than forty-five (45), days after the date of the punch list, the Architect shall re-inspect that portion of the Work, identifying any remaining uncompleted items and items requiring corrective work, amend the punch list accordingly, and distribute such amended punch list to the Owner and to the Construction Manager.

**§ 2.3.2.25 Deliberately omitted.**

**§ 2.3.2.26** Consistent with the requirements of Direct Purchases, all warranties shall either be assignable or extendable to the Owner (unless the Owner is notified in advance in writing that certain Work or material warranties are not assignable or extendable and Construction Manager shall not use such Subcontractor or purchase such materials without the prior written approval of the Owner, which approval may be withheld in its sole discretion). The Construction Manager shall take all actions necessary to assign the Subcontractors' warranties to the Owner.

**§ 2.3.2.27** The Construction Manager acknowledges that the Site is smoke-free. The Construction Manager shall inform its employees and its Subcontractors and vendors of the no-smoking policy and shall enforce the same.

**§ 2.3.2.28** The Construction Manager represents that it will strictly enforce all of the terms of its subcontracts with its Subcontractors and further represents that none of the terms of any subcontracts will be inconsistent with the terms of this Agreement.

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

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

**§ 3.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in 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,~~ 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. 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 required by law~~ cause the Architect to collect all data and obtain such tests inspections and reports required by Applicable Law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

**§ 3.1.4.3** The Owner, ~~when such services are requested, shall~~ Owner shall cause the Architect to furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 3.1.4.4** 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.

**§3.1.5** The Owner shall only communicate with Subcontractors through the Construction Manager except as specifically authorized under the Contract Documents.

### **§ 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 representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~ **Owner's Representative.** See Section 1.4.

**§ 3.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing ~~services, services~~ that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project.

### **§ 3.3 Architect**

The Owner shall retain an Architect to provide services, ~~duties, duties~~ and responsibilities as described in AIA Document B133™-2014, B103™-2007, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as modified including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, subject to redactions of business terms and any further modifications to the agreement.

## **ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**



#### § 4.1 Compensation

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

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

A lump sum of Twenty Thousand and NO/100 Dollars (\$20,000)

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

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

#### § 4.2 Payments

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

§ 4.2.2 ~~Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (—) days after the invoice. Provided a properly completed Application for Payment, with all required back-up, is received by the Owner and Architect by the second Monday of each month for the costs incurred in the immediately prior month, payments for undisputed amounts shall be made within fifteen (15) after the second Monday of the month, unless that Monday is a holiday, in which case it will be sixteen (16) days. All Applications for Payment received after the second Monday of the month, shall be deemed submitted with the next month's Application for Payment, unless the that Monday is a nationally recognized holiday, in which case the Application for Payment must be submitted by the second Tuesday of the months. Amounts unpaid for thirty (30) days after the due 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-Owner.~~  
(Insert rate of monthly or annual interest agreed upon.)

% — Five percent (5%)

### 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. ~~funds for the Construction Manager's performance of the Contract. 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.)

( ) of the Cost of the Work. There shall be no mark-up on Subcontractor's invoices.

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

The Construction Manager's Fee shall be increased or decreased by the increases or decreases in the Cost of the Work, other than decreases resulting from the removal of sales tax for sales tax exempt items, through an additive or deductive Change Order as applicable

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

Maximum Subcontractor overhead of Five percent(5%) and profit of Five percent (5%). Maximum Subcontractor mark-up for Its Sub Subcontractor is Ten percent (10%).

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed      percent (      %) of the standard rate paid at the place of the Project, be charged as set forth in Section 6.5.2.

§ 5.1.5 Unit prices, if any:

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

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

## § 5.2 Guaranteed Maximum Price

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

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

If, upon completion of the Project, the actual Cost of the Work plus the Construction Manager's Fee is less than the Guaranteed Maximum Price, as set forth herein and as adjusted by Change Orders and Substantial Completion is achieved on or before the date stated in the Construction Schedule, the difference will remain with the Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and delays beyond the Construction Manager's control pursuant to Section 8.3.1 of A201-2007. 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, A201-2007.~~ 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, the A201-2007.~~

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

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this written approval prior to incurring the ~~cost~~ cost, which approval shall not be unreasonably withheld. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

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

§ 6.2.2 ~~Wages or salaries~~ Salaries and other compensation of the Construction Manager's supervisory and administrative personnel ~~when stationed at the site with the Owner's prior approval.~~  
(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.) providing preconstruction phase services or construction phase services or at the field office, in whatever capacity employed, at the rates contained in Exhibit F. The hourly fixed rates specified in Exhibit E shall be "all-in" and shall include the costs identified in Sections 6.2.4, 6.2.5 and 6.2.7, and shall also include the cost of cellular phones, computers and company vehicles. Paid time off for supervisory personnel, prorated to the time spent on the project, will be reimbursed at the rates set forth in the Exhibit F. Supervisory personnel shall not be reimbursed in excess of eighty (80) hours per two week pay period.

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at shops, factories, workshops when traveling 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. Work, to be billed and paid at the "all-in" rates set forth in Exhibit F as further described in Section 6.2.2 above.

§ 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.~~ shall be included in the hourly rates specified in Exhibit F.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or ~~vendor, with the Owner's prior approval.~~ vendor shall be included in the hourly rates specified in Exhibit F.

§ 6.2.6 Deliberately omitted.

§ 6.2.7 Deliberately omitted.

### § 6.3 Subcontract Costs

.1 Payments made or owed pursuant to an invoice included in an application for payment for that cycle by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

.2 Deliberately omitted.

.3 The Construction Manager shall not mark-up the costs of subcontracts, or additive Change Orders from Subcontractors, provided, however, Construction Manager shall be entitled to its Construction Manager's Fee. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

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

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

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

~~**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.~~

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. ~~The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. Rental charges for Construction Manager-provided equipment shall be reimbursed as provided in Exhibit G. Construction Manager-provided equipment shall be reimbursed at 75% of the current rental rates published in the AED Green Book. The total rental of any piece of equipment for the Project will be capped at 50% of the retail purchase price of that item measured as of the date the equipment is first used on the Project.~~

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

~~**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, 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. All travel expenses shall be approved in writing by Owner prior to being incurred and such expenses are subject to the following:

.1 Transportation. Actual ground transportation and airfare at coach rates, provided that non-refundable airline tickets shall be purchased when available and appropriate. Use of a personal automobile is reimbursed at the applicable IRS rate.

.2 Hotel. Actual cost for non-luxury hotel accommodations.



.3 Telephone. Owner shall not be required to reimburse vendor personnel for individual telephone usage (including, without limitation, cellular, facsimile and other telephone usage).

.4 Incidental Costs. Per diem reimbursement shall be \$60.00 per day.

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

#### § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of the Construction Manager's insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The Construction Manager's Risk Management Liability Insurance shall be invoiced at the rate of \$ \_\_\_\_\_ per \$1,000 of the actual Cost of the Work approved to be reimbursed in each monthly Application for Payment.

§ 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~~. liable but no sales tax shall be paid for items that may be purchased as exempt from sales tax as permitted by Wis. Stats. §77.54(9m) (2013-14) as may be modified, renumbered or amended from time to time..

§ 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~~ of ~~A201-2007~~ or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

§ 6.6.7 Deposits made with respect to the Project that are 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.

#### § 6.7 Other Costs and Emergencies

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

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007 of A201-2007.

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, ~~Subcontractors or suppliers, Manager or its Subcontractors of any tier or vendors, including Direct Purchase suppliers or vendors (collectively, this group is the "Responsible Persons")~~, provided that such damaged or nonconforming Work was not caused by negligence of the Construction Manager or its Responsible Persons or failure to fulfill a specific responsibility of the Construction Manager or of its Responsible Persons 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~~ suppliers including Direct Purchase suppliers, vendors or others, after the conclusion of the Construction Manager's good faith and diligent efforts to recover such sums from insurance, sureties, Subcontractors, suppliers including Direct Purchase suppliers and vendors, or others to the extent such entities may be liable for such costs.

**§ 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: Work.

#### **§ 6.8 Costs Not To Be Reimbursed**

**§ 6.8.1** ~~The~~ Notwithstanding any other term of this Agreement, the Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, ~~Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;~~ Contract or by anyone for whom it is responsible;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase; ~~Phase;~~
- .9 ~~Sales tax paid for items that may be purchased as exempt from sales tax as permitted by Wis. Stats. §77.54(9m) (2013-14) as may be modified, renumbered or amended from time to time; and~~
- .10 Any costs not permitted to be reimbursed under A201-2007.

#### **§ 6.9 Discounts, Rebates and Refunds**

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

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

#### **§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in



the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes in writing the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Owner shall also have access to interview Construction Manager's personnel and accountants with regard to the accounting records. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law, by law, including the requirements of Medicare. If an audit inspection discloses overcharges in excess of one-half of one percent (.5%) of the total billings for the Project, the reasonable cost of the audit shall be paid by the Construction Manager upon ten (10) days written notice. The provisions of this Section shall be inserted into Construction Manager's subcontracts.

### **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

#### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to the Owner and 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. If required by the Owner, the Construction Manager shall meet with the Owner or Architect prior to submitting the Application for Payment to review the proposed charges.

**§ 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:

N/A

**§ 7.1.3** Provided that an Application for Payment is received by the Architect not later than the — day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the — day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than — ( — ) days after the Architect receives the Application for Payment. properly completed Application for Payment, with all back-up documentation, is received by the Architect and Owner not later than the second Monday of a month or Tuesday is Monday is a nationally recognized holiday, payment by the Owner to the Construction Manager of the statement amount less retainage, as hereinafter provided, shall be made within fifteen (15) days after the second Monday or Tuesday, as applicable. Applications for Payment received after the second Monday or Tuesday of a month, as applicable, shall be deemed submitted with the next monthly Application for Payment. Payment does not waive any Claims Owner may have, or later discover, arising out of the Work.

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

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. The Construction Manager shall provide its own and its subcontractors unconditional waivers of lien for the payment they received under the previous Application of Payment. If an unconditional waiver of lien is not received by the next Application for Payment, Owner has the authority to withhold one hundred and fifty percent (150%) of the amount allocated for payment to the Construction Manager or its Subcontractor or vendor under the previous 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 advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of      percent (     %)-Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 ~~Subtract retainage of      percent (     %) from that portion of the Work that the Construction Manager self-performs; Deliberately omitted.;~~
- .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. Payments to Subcontractors shall be subject to retainage of 10%. If a Subcontractor has satisfactorily completed all of its Work in the Owner's and Construction Manager's opinions, the Owner will consider releasing the Subcontractor's retainage prior to final payment, subject to any changes. The Construction Manager's Fee, and General Requirements costs shall not be subject to retainage.~~



§ 7.1.9 Except with the Owner's prior 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. Construction Manager shall not store materials and equipment off-site except with Owner's prior written approval, which shall be in a secure location and in no case shall the stored materials and equipment exceed the insurance coverage for off-site storage of material and equipment. Construction Manager shall notify the Owner of the location of the stored materials and equipment.

§ 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 By delivering an Application for Payment, the Construction Manager represents and warrants that title to all equipment and materials will pass to the Owner no later than the time of payment and that the material and equipment are free from all liens, claims, security interests or encumbrances.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract ~~Sum~~, Sum (less one hundred and fifty percent (150%) of the amount required to complete punch list items that cannot be completed because they are seasonal, such as landscaping), 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 beyond, and survive, final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final ~~Application for Payment~~, and properly completed Application for Payment with all back-up documentation;
- .3 a final Certificate for Payment has been issued by the Architect. ~~has been issued by the Architect;~~
- .4 a certificate of occupancy has been issued or other determination made by the governmental authorities having jurisdiction of the Project that it may be occupied and used for its intended purpose, provided that this requirement shall be waived if the delay in obtaining such occupancy or approval is not the fault of the Construction manager or of someone for whom it is responsible;
- .5 all operating and maintenance manuals and all warranties have been delivered and assigned, where applicable, to the Owner;
- .6 the "as-built" Drawings have been timely provided to the Architect so that the record Drawings could be timely completed by the Architect;
7. Evidence that the insurance required by this Agreement will remain in force after Final payment and shall not be cancelled without thirty (30) days prior written notice to the Owner;
8. completion of any commissioning, move-in and Project close-out as may be required by this Agreement; and
- .9 consent of the surety, if any.

With the final Application for Payment, the Construction Manager shall provide its unconditional waiver of lien for the entire Work and the waivers of liens from the Subcontractors and vendors. If any of those waivers are conditioned on payment, Construction Manager shall deliver the unconditional waivers of lien within fifteen (15) days of payment or shall refund one hundred and fifty percent (150%) of the amount previous paid for the conditional waiver of lien, which shall be held by the Owner until the unconditional waiver of lien is delivered or the lien rights expire.

The Subject to compliance with the forgoing requirements and § 7.2.2, the Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

N/A

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect and Owner 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 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 make a claim under the dispute resolution procedure hereunder within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation file a claim within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment. Payment that is not disputed.

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

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, provide the initial Certificates of Insurance and Endorsements for Additional Insureds attached hereto as Exhibit H and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

## 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 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 ☐ Litigation in the Circuit Court of Outagamie County, Wisconsin.



[ ☒ ] Other: (Specify)

Owner shall have the option to elect either binding arbitration with a panel of three mutually-selected arbitrators or litigation in the Circuit Court for Outagamie County, Wisconsin. The parties further agree to utilize the Construction Industry Arbitration Rules of the American Arbitration Association to govern the arbitration procedure but the parties may mutually agree upon any arbitration service and are not required to use the American Arbitration Association. However, nothing herein shall prohibit Construction Manager or Architect from enforcing its lien rights in a court of law.

### **§ 9.3 Initial Decision Maker**

~~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. Deliberately omitted.~~

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

## **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 properly 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 shall be equitably compensated for Construction Phase services properly performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.~~

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

agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such ~~termination-termination~~, provided that no Subcontract or purchase order shall require a payment in excess of the value of the Work performed prior to 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~~, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed 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 and to an affiliate of the Owner. Except as provided in this Section and Section 13.2.2 of~~ A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 11.5** Other provisions:

§ 11.5.1 It is expressly understood that in the event the Construction Manager incurs legal or other professional fees in the process of pursuing or defending a claim, suit or dispute with a Subcontractor directly relating to the Project, then such fees shall be reimbursable to the Construction Manager as a Cost of the Work pursuant to Article 6, provided however, Construction Manager shall return any fees paid to defend a claim by a Subcontractor who prevails or substantially prevails in its claim against the Construction Manager and, provided further, that any payment is subject to the Guaranteed Maximum Price, if one is established.

§ 11.5.2 Notwithstanding the event of any claim, or other matter in question arising out of or relating to this Agreement or the breach thereof, the Construction Manager shall carry on the Work and the Owner shall continue to make payments in accordance with this Agreement.

#### § 11.5.3 Nondiscrimination

In addition to any other requirement of law, Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap in their performance of this Agreement, including, but not 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 apprenticeships. Notices shall be posted in conspicuous places available for employees and applicants for employment setting forth the provisions of this nondiscrimination clause.

### ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement, along with the other Contract Documents, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior or contemporaneous 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 modified.
- .2 Exhibit A – Preliminary Scope Overview dated January 14, 2016.
- .3 Exhibit B- Geotechnical report dated January 19, 2012.
- .4 Exhibit C- Construction Manager's Response to Request for Proposals.
- .5 Exhibit D - AIA Document A201–2007, General Conditions of the Contract for Construction, as modified.
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .6 Exhibit E - RFP dated \_\_\_\_\_.
- .7 Exhibit F - Supervisory and Administrative Hourly Rates.
- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .7 Exhibit G - Equipment Rental Rates.
- .5 Other documents:  
(List other documents, if any, forming part of the Agreement.)
- .8 Exhibit H – Certificates of Insurance and Additional Insured's Endorsement

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

VILLAGE OF LITTLE CHUTE.

OWNER *(Signature)*

*(Printed name and title)*

CONSTRUCTION MANAGER *(Signature)*

*(Printed name and title)*

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