

Request for Proposal

FRANKLIN TOWNSHIP COMMUNITY SCHOOL CORPORATION

Solicitation For: guaranteed savings contract

Response Due Date: June 24, 2024 by 9:00 am EST

SECTION I: GENERAL INFORMATION AND REQUESTED SERVICES

1.1 INTRODUCTION

FRANKLIN TOWNSHIP COMMUNITY SCHOOL CORPORATION (School) intends to solicit responses to this Request for Proposals (RFP) in accordance with specifications contained in this document. This RFP is being posted to School website at <https://ftsc.org/> for downloading. A nominal fee will be charged for providing paper copies. Neither this RFP nor any response (proposal) submitted hereto are to be construed as a legal offer.

1.2 DEFINITIONS AND ABBREVIATIONS

| | |
|-----------------------|---|
| Award Recommendation | School's summary to School board of the proposals and suggestion on offeror selection for purposes of beginning contract negotiations. |
| Contract Award | The acceptance of the Award Recommendation by School Board |
| Qualified Provider | The offeror who responds to this solicitation by submitting an offer, to whom the award is made under the applicable RFP award standard and who then enters into a guaranteed savings contract with School. |
| Project | Evaluate and recommend to the governing body conservation measures and provide for the implementation of conservation measure as described in this RFP. |
| Offer or Proposal | A response submitted by an offeror to this RFP. |
| Offeror or Respondent | A qualified provider as defined in Ind. Code § 36-1-12.5-3. School will not consider a proposal responsive if two or more offerors submit a joint or combined proposal. One entity or individual must be clearly identified as the Respondent who will be ultimately responsible for performance of the contract. |

Services Evaluation and recommendation of conservation measures, and provide for the implementation of conservation measures defined under Ind. Code § 36-1-12.5-1.

Total Bid Amount The amount that the Respondent proposes that represents their total, all-inclusive price.

1.3 AWARDS UNDER THE RFP

It is the intent the award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to School, taking into consideration price and the other evaluation factors set forth in the request for proposal.

1.4 SUMMARY SCOPE OF SERVICES

School seeks to Respondent to outline how it would offer Services based upon the following Project parameters:

| Proposed Building | Location | Property Info |
|------------------------------|---|--|
| Franklin Central High School | 6215 South Franklin Rd Indianapolis, IN 46259 | Property Records at https://maps.indy.gov/ |
| Edgewood Intermediate School | 7620 East Edgewood Ave. Indianapolis, IN 46239 | |

Information about schools within and students attending can be viewed at <https://inview.doe.in.gov/corporations/1053100000>

- a. Review: School shall be entitled to final review and approval of all Services prior to payment. School and Qualified Provider will adhere to mutually agreed upon timelines for reviews (including review by departments), approval and dates, with Services to be supplied according to the schedule outlined in the Guaranteed savings contract.
- b. Sample contract is attached as Exhibit A.
- c. When School makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of the arrangement, the contract may be canceled.

1.5 RFP OUTLINE

| Section | Description |
|--|---|
| General Information and Requested Services | This section provides an overview of the RFP, general timelines for the process, and a summary of the services being solicited by School via this RFP |
| Proposal Preparation Instruction | This section provides instructions on the format and content of the RFP including a Letter of Transmittal, Business Proposal, Technical Proposal, and a Cost Proposal |
| Proposal Evaluation Criteria | This section discusses the evaluation criteria to be used to evaluate Respondents' proposals |

1.6 PRE-PROPOSAL CONFERENCE

A pre-proposal conference will not be held.

1.7 QUESTION/INQUIRY PROCESS

Questions/Inquiries may be submitted via email to Fred.mcwhorter@ftcsc.org and must be received by the deadline indicated.

The subject line of the email submissions must clearly state the following:

Guaranteed savings contract Proposal – [INSERT COMPANY NAME]

School will compile a list of any questions/inquiries submitted by Respondents. No Respondent shall rely upon, take any action, or make any decision based upon verbal communications with any School employee.

Other than the designated person shown in this RFP, inquiries and/or communications are not to be directed to board member, employee, contractor associated or affiliated with School. Such action will most likely disqualify Respondent from further consideration for a contract resulting from this RFP.

If it becomes necessary to revise any part of this RFP, or if additional information is necessary for a clearer interpretation of provisions of this RFP prior to the due date for proposals, an addendum will be posted on School website. If such addenda is necessary, School may extend the due date and time of proposals to accommodate such additional information requirements.

1.8 DUE DATE FOR PROPOSALS

Each Respondent must email and then submit three (3) complete copies of the proposal, including the Transmittal Letter and other related documentation as required in this RFP. All proposals must be sent via a national overnight carrier or hand delivered and then an electronic copy via email before the deadline in the Summary of Milestones section to:

Fred McWhorter, FRANKLIN TOWNSHIP COMMUNITY SCHOOL CORPORATION,
6141 S. Franklin Rd, Indianapolis, IN 46259

and Fred.mcwhorter@ftcsc.org

Regardless of delivery method, all proposals must be **sealed** and identified with the RFP information. School will not accept any incomplete proposals. Any proposal received by School after the deadline will not be considered even if postmarked before the deadline.

School accepts no obligations for costs incurred by Respondents in anticipation of being awarded a contract.

1.9 MODIFICATION OR WITHDRAWAL OF OFFERS

Modifications to responses to this RFP may only be made consistent with the submittal of the original response, acceptable to School and clearly identified as a modification.

Only Respondent's authorized representative may modify or withdraw its proposal and prior to the deadline.

1.10 PRICING DURING AUDIT PHASE

It is anticipated School will need an audit to (i) identify energy and other conservation measures ("ECMs") available to and appropriate for its property and facilities, (ii) estimate guaranteed savings that would result from implementing ECMs, and (iii) propose a scope of work and project price for installation and implementation of such ECMs. Pricing for the audit phase must be firm and remain open for a period of not less than 60 days from the proposal due date.

1.11 PROPOSAL CLARIFICATIONS AND DISCUSSIONS, AND CONTRACT DISCUSSIONS

School reserves the right to request clarifications on proposals submitted to School. School also reserves the right to conduct discussions, either oral or written, with Respondents. These discussions could include request for additional information, request for cost or technical proposal revision, etc. Additionally, and in conducting discussions, School may use information derived from proposals submitted by competing Respondents if the identity of the Respondent providing the information is not disclosed to others. School will provide equivalent information to all Respondents which have been chosen for discussions. Discussions, along with negotiations with responsible Respondents may be conducted for any appropriate purpose.

1.12 BEST AND FINAL OFFER

School may request best and final offers from those Respondents determined by School to be reasonably viable for contract award. However, School reserves the right to award a contract on the basis of initial proposals received. Following evaluation of the best and final offers, School may select for final contract negotiations that are most advantageous to School, considering cost and the evaluation criteria in this RFP.

1.13 SITE VISITS

School may request a site visit to a Respondent's offices and facilities to aid in the evaluation of the Respondent's proposal.

1.14 TYPE AND TERM OF CONTRACT

School intends to consider entering into a contract with one or more Respondents to fulfill the requirements in this RFP. The term of the contract shall be for a period based upon estimated Project completion time frames. There may be renewals at School's option.

1.15 CONFIDENTIAL INFORMATION

Respondents are advised materials contained in proposals are subject to the Indiana Access to Public Records Act (APRA), and after the contract award, the entire RFP file may be viewed and copied by the public.

1.16 TAXES

Proposals should not include any tax from which School is exempt.

1.17 IDOA REGISTRATION

Offerors are required to be pre-qualified with the Public Works Certification Board and must complete the requirements outlined at <https://www.in.gov/idoa/2485.htm>

1.18 SECRETARY OF STATE & DEPARTMENT OF REVENUE REGISTRATION

If awarded the contract, the Respondent will be required to register, and be in good standing, with the Indiana Secretary of State, Department of Revenue, DWD, and Workers Compensation. Information concerning registration with the Secretary of State may be obtained via www.in.gov/sos and Department of Revenue at <https://www.in.gov/dor/>

1.19 COMPLIANCE CERTIFICATION

Responses to this RFP serve as a representation neither Respondent nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments or reports to State of Indiana. Submission of a proposal is a warranty by the Respondent that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by any governmental entity within the United States. Respondents also by submitting a proposal represents neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into a contract with School by any federal agency or by any department, agency or political subdivision of the United States.

1.20 SUMMARY OF MILESTONES

Due to the unpredictable nature of the evaluation period and force majeure events, the estimated dates below are subject to change.

Estimated RFP Dates

| Activity | Date |
|--|------------------------------|
| Publication of RFP | May 17 & May 24 |
| Pre-Proposal Conference | n/a |
| Deadline to Submit Written Questions | May 27 |
| Response to Written Questions/RFP Amendments | May 29 |
| Submission of Proposals | June 24, 2024 by 9:00 am EST |
| The dates for the following activities are target dates only. These activities may be completed earlier or later than the date shown. | |
| Proposal Evaluation | Beginning June 24 |
| Proposal Discussions/Clarifications (if necessary) | Beginning June 24 |
| Oral Presentations (if necessary) | TBD |
| Best and Final Offers (if necessary) | TBD |
| RFP Award Recommendation | June 24, 2024 |

1.21 EVIDENCE OF FINANCIAL RESPONSIBILITY

Evidence of financial responsibility will not exceed one percent (1%) of the contract price, when required to guarantee the performance of the selected Respondent prior to a fully executed contract. The evidence of financial responsibility must when required by School remain in effect for the duration of the contract including any renewals. The evidence of financial responsibility must be in the form of an irrevocable letter of credit, certified check, cashier's check, or a bond acquired from a surety company registered with the IN Department of Insurance or other evidence deemed

acceptable by School. Notwithstanding any other provisions relating to the beginning of the term, the contract shall not become effective until the evidence of financial responsibility required by the contract is delivered in the correct form and amount to School. The evidence of financial responsibility must be submitted to the following address prior to contract execution:

Fred McWhorter, Franklin Township Community School Corporation, 6141 S. Franklin Rd,
Indianapolis, IN 46259

SECTION II: PROPOSAL PREPARATION INSTRUCTIONS

2.1 GENERAL

To facilitate the timely evaluation of proposals, the format for proposal submission is as follows:

- Each item requesting information must be addressed in the Respondent's proposal.
- Each item, i.e. Transmittal Letter, Business Proposal, Technical Proposal, Cost Proposal, etc., must be separate standalone electronic files on USB Thumb Drive.
- Confidential Information must also be clearly marked in a separate folder/file on any included USB Thumb Drive.

2.2 TRANSMITTAL LETTER

The Transmittal Letter must address the following unless identified as "optional."

2.2.1 Agreement with requirements listed in this RFP

The Respondent must explicitly acknowledge understanding of the general information presented in this RFP and agreement with any requirements/conditions listed in this RFP and applicable laws including but not limited to 2 CFR § 200; 48 CFR § 52; Ind. Code § 5-16-6; 5-16-13; 36-1-12.5; and 36-1-12.

2.2.2 Summary of Ability and Desire to Supply the Required Services

2.2.3 Signature of Authorized Representative

2.2.4 Respondent Notification

Unless otherwise indicated in the Transmittal Letter, Respondents will receive communications and notifications via e-mail to the addresses supplied by Respondents.

2.2.5 Confidential Information

A Respondent may wish to provide the following information if it wishes to claim information is not subject to public disclosure:

- List of documents, or sections of documents, for which statutory exemption to the APRA is being claimed;
- Specify which statutory exception of APRA applies for each document, or section of the document;
- Provide a description explaining the manner in which the statutory exception to the APRA applies for each document or section of the document.
- Provide a separate redacted (or public viewing) version of the document.

2.2.6 Other Information (Optional)

Any other information the Respondent may wish to briefly summarize relevant to the RFP and Services will be acceptable.

2.3 BUSINESS PROPOSAL

The Business Proposal must address the following topics unless identified as “optional.”

2.3.1 General (optional)

This section of the business proposal may be used to introduce or summarize any information the Respondent deems relevant to School’s successful acquisition of the Services requested in this RFP.

2.3.2 Respondent’s Company Structure

The legal entity for Respondent’s organization accompanied by documentation from Indiana Secretary of State’s office, the types of ventures in which the organization is involved, and a website showing the organization’s hierarchy, resources, and services are to be included in this section.

2.3.3 Company Financial Information

This section must include documents to demonstrate the Respondent’s financial stability. The offeror must submit a financial statement, a statement of experience, a proposed plan or plans for performing the Services, and the resources, labor, technology, materials, supplies, and equipment that the offeror has available for the performance of the Service. The financial statement must be submitted on current forms prescribed by IN SBOA (<https://forms.in.gov/Download.aspx?id=6422>). Examples of additional acceptable documents may include: federal tax returns or financial statements for the two (2) recent complete fiscal years. If neither of these can be provided, explain why and include an income statement and balance sheet, for each of the two most recently completed fiscal years along with Indiana SBOA Form 96 (<https://forms.in.gov/Download.aspx?id=6422>)

2.3.4 Integrity of Company Structure and Financial Reporting

This section must include a statement indicating that an officer, director, member, manager, or partner, of the organization, has taken responsibility for the correctness of financial information supplied.

2.3.5 Contract Terms/Clauses

Contract provisions that School expects to mandate with the successful Respondent(s) are included in Exhibit A. Additional contract provisions that each School expects to mandate with the successful Respondent(s) are required under applicable federal and state laws including but not limited to 2 CFR § 200; 48 CFR § 52; Ind. Code § 5-16-6; 5-16-13; 36-1-12.5; and 36-1-12; See <http://iga.in.gov/> to review current version of Ind. Code provisions.

In your Transmittal Letter please indicate acceptance of these mandatory contract terms. If a clause is not acceptable as worded, suggest specific alternative wording to address issues raised by that clause. If you require additional contract terms please include them. School reserves the right to reject any requested changes.

2.3.6 References

School should receive references for whom the Respondent has provided or services similar to those services requested in this RFP.

2.3.7 Registration to do Business

If awarded the contract, the Respondent will be required to be registered and be in good standing with the Indiana governmental entities (e.g. Secretary of State, Department of Revenue, Department of Workforce Development).

2.3.8 Authorizing Document

Respondent personnel signing the Transmittal Letter must be authorized by the organization to commit the organization contractually.

2.3.9 Subcontractors

The Respondent is responsible for the performance of any obligations that may result from this RFP, and shall not be relieved by the non-performance of any subcontractor. Any Respondent's proposal must identify all subcontractors and describe the contractual relationship between the Respondent and each subcontractor.

The combined qualifications and experience of the Respondent and any or all subcontractors will be considered in School's evaluation.

2.3.10 Evidence of Financial Responsibility

This section will indicate the ability to provide the mandatory evidence of financial responsibility. Notwithstanding any other provisions relating to the beginning of the term, any contract will not become effective until the evidence of financial responsibility is delivered in the correct form and amount to the address indicated in Section 1.21.

2.3.11 General Information

Each Respondent must enter general information about its operations including contact information.

2.4 TECHNICAL PROPOSAL

The Technical Proposal must be divided into understandable sections. Where appropriate, supporting documentation may be referenced by a page and paragraph number.

2.5 COST PROPOSAL

In order for the Cost Proposal to be valid, Respondents must provide proposed annual costs for the Services. Prices must include all labor, materials, supplies, equipment, delivery, shipping, service, and administrative costs.

Cost Proposal Narrative

The Respondent should provide a brief narrative in support of each Cost Proposal item. The narrative should be focused on clarifying how the proposed prices correspond directly to the Respondent's Technical Proposal.

Cost Assumptions, Conditions and Constraints

The Respondent should list and describe as part of its Cost Proposal any special cost assumptions, conditions, and/or constraints relative to, or which impact, the prices presented on the Cost Schedules.

SECTION III: PROPOSAL EVALUATION

3.1 PROPOSAL EVALUATION PROCEDURE

School has selected personnel to act as a proposal evaluation team. Subgroups of this team will be responsible for evaluating proposals with regard to compliance with RFP requirements. All evaluation personnel will use the evaluation criteria stated in this RFP and allowed under applicable laws. Each offeror's: (1) history of contracting with or hiring minority, women, and veteran business

enterprises; and (2) good faith efforts to fulfill State of Indiana goals for contracting with or hiring minority, women, and veteran business enterprises; will be considered in the evaluation of the offeror's proposal. Proposals will be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Discussions may be conducted with, and best and final offers obtained from, responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award.

Offerors will be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals. In conducting discussions with an offeror, information derived from proposals submitted by competing offerors may be used in discussion only if the identity of the offeror providing the information is not disclosed to others. School will provide equivalent information to all offerors with which School chooses to have discussions.

When School determines it is in the best interests of School: (1) the solicitation may be canceled or (2) offers may be rejected; in whole or in part as specified in this RFP. Notwithstanding any other law, offers may be opened after the time stated in this RFP if both of the following apply: (1) School makes a written determination that it is in the best interest of School to delay the opening and (2) the day, time, and place of the rescheduled opening is announced at the day, time, and place of the originally scheduled opening. The determinations of School are final and conclusive.

The procedure for evaluating the proposals against the evaluation criteria will be as follows:

- 3.1.1 Each proposal will be evaluated for adherence to requirements on a pass/fail basis. Proposals that are incomplete or otherwise do not conform to proposal submission requirements may be eliminated from consideration.
- 3.1.2 Each proposal will be evaluated on the basis of the categories included in Section 3.2.
- 3.1.3 Based on the results of this evaluation and if School determines to proceed with the Project, School will enter into negotiations with the offeror whose proposal has been selected by the evaluation committee considering: (1) the responses to the RFP; (2) any interviews with selected offerors; and (3) evaluation of fees. If, however, School decides that no proposal is sufficiently advantageous to School, School may take whatever further action is deemed necessary to fulfill its needs.

3.2 EVALUATION CRITERIA

Proposals will be evaluated based upon the ability of the Respondent to satisfy the requirements of the RFP in a cost-effective manner. If any criteria are found to be inconsistent or incompatible with applicable state or federal laws, regulations, or policies, that criteria will be disregarded and the responses will be evaluated and scored without taking into account such criteria.

Summary of Evaluation Criteria:

| Criteria | Points |
|--|---------------------|
| 1. Adherence to Mandatory Requirements | Pass/Fail |
| 2. Management Assessment/Quality (Business and Technical Proposal) | 80 available points |
| 3. Cost (Cost Proposal) | 20 available points |
| Total | 100 |

Proposals will be evaluated using the following approach.

Step 1: In this step, proposals will be evaluated only against Criteria 1 to ensure they adhere to the Mandatory Requirements. Any proposals not meeting the Mandatory Requirements will be disqualified, not considered responsive, and/or rejected.

Step 2: Proposals meeting the Mandatory Requirements will then be scored based on Criteria 2 and 3. This scoring will have a maximum possible score. All proposals will be ranked on the basis of their combined scores for Criteria 2 and 3. This ranking will be used to create a “short list”. Any proposal not making the “short list” will not be considered for any further evaluation. Step 2 may include one or more rounds of proposal discussions, oral presentations, clarifications, demonstrations, etc. focused on cost and other proposal elements. Step 2 may include additional “short lists.”

The section below describes the evaluation criteria.

- 3.2.1 Adherence to Requirements – Pass/Fail
Respondents passing this category move to Phase 2 and proposal is evaluated for Management Assessment/Quality and Price.

The following 2 categories cannot exceed 100 points.

- 3.2.2 Management Assessment/Quality: **80** available points

- 3.2.3 Price: **20** available points

In determining whether an offeror is responsible, School may consider the following factors: (1) The ability and capacity of the offeror to provide the Services; (2) The integrity, character, and reputation of the offeror; (3) The competency and experience of the offeror. In determining whether an

offeror is responsive, School may consider the following factors: (1) Whether the offeror has submitted an offer that conforms in all material respects to the specifications; (2) Whether the offeror has submitted an offer that complies specifically with the solicitation and the instructions to offerors; (3) Whether the offeror has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.

School expects the contract award will be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to School, taking into consideration price and the other evaluation factors set forth in the request for proposals. Award may be made to more than one (1) offeror whose proposals are determined in writing to be advantageous to School, taking into consideration price and other evaluation factors set forth in the request for proposals. Offers will be received and contracts may be awarded separately or for any combination of a line or a class of Services contained in this RFP.

An offeror does not gain a property interest in the award of a contract by School unless:

(1) the offeror is awarded the contract by School's board; and (2) the contract is completely executed by the offeror and School.

DRAFT

AIA® Document A104[®] - 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the << >> day of << >> in the year << 2024 >>
(In words, indicate day, month and year.)

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

<< >>
<< >>
<< >>
<< >>

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

<< >>
<< >>
<< >>
<< >>

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

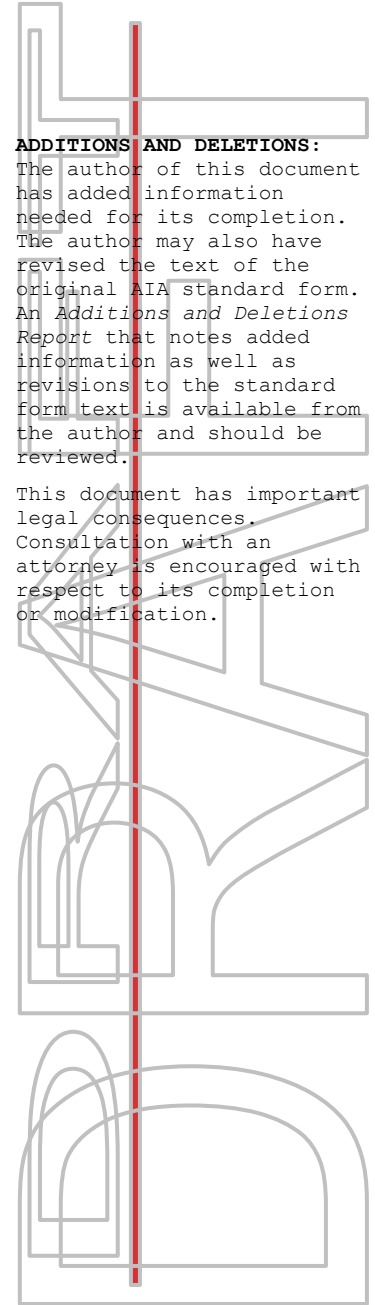
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The ~~Architect~~ Consultant:
(Name, legal status, address and other information)

<< >>
<< >>
<< >>
<< >>

The Owner and Contractor agree as follows.



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

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

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EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

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

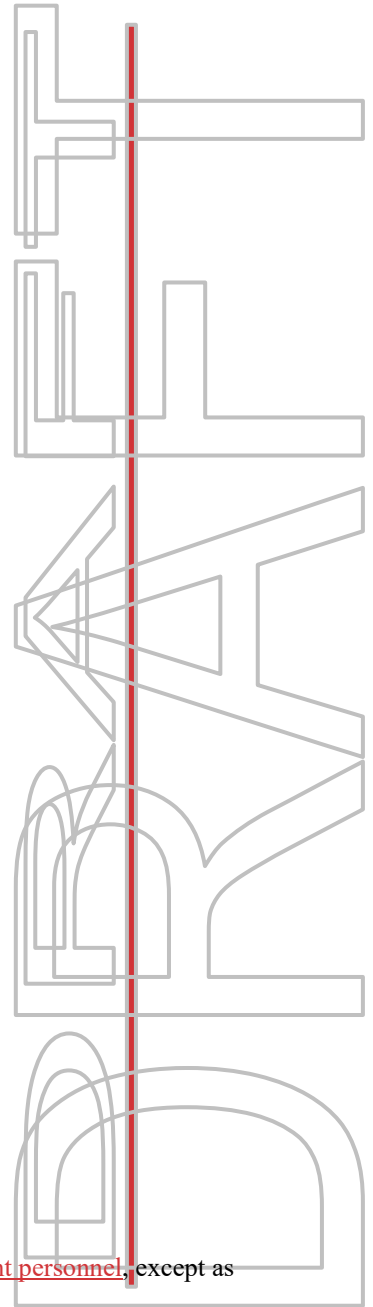
ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

[] The date of this Agreement.

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



[« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

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

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

§ 2.3 Substantial Completion

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

(Check the appropriate box and complete the necessary information.)

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

[~~« X »~~] By the following date: ~~« »~~

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

Portion of Work

100%

Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, ~~liquidated damages, if any, the Contract Sum~~ shall be ~~assessed/reduced~~ as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in ~~current~~ the amount of funds approved by its board for the Contractor's performance of the Contract and satisfactory completion of the Work. The Contract Sum shall be one of the following:

(Check the appropriate box.)

[~~« X »~~] Stipulated Sum, in accordance with Section 3.2 below

[« »] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[« »] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be ~~« »~~ ~~(\$ « » Dollars)~~ ~~(\$ « »)~~, subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

~~«not applicable »~~

§ 3.2.2 Unit prices, if any:

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

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

§ 3.2.3 Allowances, if any, included in the stipulated sum:
(Identify each allowance.)

| Item | Price |
|------|-------|
| | |

§ 3.3 Cost of the Work Plus Contractor's Fee

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

«not applicable »

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

«not applicable »

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed «
» (\$ «
»), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

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

«not applicable »

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

«
»

§ 3.4.3.3 Unit Prices, if any:

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

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

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

| Item | Price |
|------|-------|
|------|-------|

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

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

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 ~~Liquidated damages, if any~~ Reduction of Contract Sum:
(Insert terms and conditions for ~~liquidated damages, if any~~ reduction of Contract Sum.)

«↔»

«The amount owed by Owner will be reduced by \$100 per business day if Substantial Completion does not occur as provided in Section 2.3 and any delay (a) is not due to a force majeure event beyond Contractor's anticipation or control or (b) due to Owner's fault. »

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

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

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

« »

§ 4.1.3 Provided that an Application for Payment is received by the ~~Architect~~ Owner not later than the ~~«-30th»~~ day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the ~~«-30th»~~ day of the ~~« »~~ month following its board's approval. If an Application for Payment is received by the ~~Architect~~ Owner after the date fixed above, payment shall be made by the Owner not later than ~~«-» («-sixty» («60»))~~ days after the ~~Architect~~ Owner receives the Application for Payment.

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

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

«↔»

«Five percent (5%) of the dollar value of all Work satisfactorily completed until the Work is Substantially Completed. If upon Substantial Completion of the Work minor items remain uncompleted, an amount computed below shall be withheld until those items are completed. The Owner shall pay the Contractor within sixty-one (61) days after the date of Substantial Completion, subject to Ind. Code § 36-1-11 and 36-1-12. If within sixty-one (61) days after the date of Substantial Completion there remain uncompleted minor items, an amount equal to two hundred percent (200%) of the value of each item as determined by the Owner shall be withheld until the item is completed. Required warranties begin no earlier than the date of Substantial Completion. »

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the monthly rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

«~~→~~ % ~~zero~~ » % ~~zero percent~~ »

§ 4.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Architect/Owner in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's/Owner's final Certificate for Payment and approval by Owner's board, or as follows:

« »

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[] Arbitration pursuant to Section 21.6 of this Agreement

[] Litigation in a court of competent jurisdiction located in the county where Owner's administrative office is located

[] Other (Specify)

« »

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

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)

« »

§ 6.1.3 The Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
| | | | |

§ 6.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

« »

«Plans and specifications included with Owner’s RFP»

| Section | Title | Date | Pages |
|---------|-------|------|-------|
| | | | |

§ 6.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

« »

Drawings included with Owner’s RFP

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

§ 6.1.6 The Addenda, if any:

| Number | Date | Pages |
|--------|------|-------|
| | | |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 Other Exhibits:
(Check all boxes that apply.)

[] Exhibit A, Determination of the Cost of the Work.

[] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204–2017 incorporated into this Agreement.)

« »

[] The Sustainability Plan:

| Title | Date | Pages |
|-------|------|-------|
| | | |

[] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
| | | | |

- .2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents.)

«>»
«bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms, drawings, plans, specifications, addenda, and Contractor's bid awarded by Owner»
»

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), 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. 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/Owner. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract Agreement may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the construction, reconstruction, alteration, renovation, repairs, maintenance, and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, supplies, 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.

§ 7.4 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/Owner and the Architect's/Owner's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect/Owner and the Architect's/Owner'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 in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's/Owner's or Architect's/Owner's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's/Owner's consultants.

§ 7.6 Digital Data Use and Transmission

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

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

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

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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

←→

«Contractor agrees to receive notices at its principal office or by the registered agent shown in the Indiana Secretary of State's office.»

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

§ 7.10 Relationship of the Parties

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

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish has furnished to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have not claim it has no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 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.

§ 8.1.4 Except for permits and fees that are the responsibility of the ~~Contractor~~Owner under the Contract Documents, ~~including those required under Section 9.6.1~~, the ~~Owner~~Contractor shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities ~~including those required under Section 9.6.1~~.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to promptly correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the 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 is 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.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the ~~Architect~~Owner and the ~~Architect~~Owner may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the ~~Architect's~~Owner's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner ~~or the Architect~~, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is an acknowledgement and 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 and applicable laws.

§ 9.1.2 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 8.1.2, 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~~Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

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

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall execute its responsibilities by following and applying at all times the highest professional, industry, construction, building, and technical guidelines and standards. The Contractor shall keep on the Project, during the entire contract time, a competent superintendent and necessary assistants, all satisfactory to the Owner and the superintendent shall not be changed, except with the consent of the Owner, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. 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.

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

§ 9.2.3 Any foreman or workman employed by the Contractor or by any Subcontractor who, in the opinion of the Owner does not perform his work in a proper and skillful manner, or is disrespectful, intemperate, disorderly, intoxicated or otherwise objectionable shall at the written request of either of the above, be forthwith discharged by the Contractor or Subcontractor employing such foreman or workman and he shall not be employed again on any portion of the Work without the written consent of the Owner. Should the Contractor fail to furnish suitable and sufficient machinery, equipment, supplies, materials, tools, or personnel for the proper prosecution of the Work, the Owner may withhold all payments that are or may become due, or may suspend the Work until such orders are upheld.

§ 9.2.4 The Owner fully expects the Contractor to employ any and all means necessary to complete the Work timely. Conduct of the Owner's affairs, such as unforeseen site conditions or delay in processing change orders, shall not be viewed as justification for delaying the Project unless the Owner can be shown to have breached the Agreement. Contractor must employ all reasonable means to execute the Project in a timely manner and in conformance with the Contract Documents even if the Contractor seeks legal remedy against the Owner for claim of damage.

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, supplies, technology, 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.

§ 9.3.2 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 skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the ~~Architect~~Owner and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner ~~and Architect~~ that materials, goods, products, supplies, and equipment furnished under the Contract will be of ~~good~~the highest quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, goods, products, supplies, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3. The warranties and guarantees provided in this Agreement and elsewhere in the Contract Documents shall be in addition to and not in limitation of any other warranty or guarantee or remedy called for in the Contract Documents, offered by the manufacturer, or otherwise prescribed by law.

§ 9.5 Taxes

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

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other approvals, 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.

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

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's ~~and Architect's~~ information a Contractor's construction schedule for the Work. The schedule shall 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.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner ~~and Architect.~~

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the ~~Architect~~ Owner Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the ~~Architect~~ Owner reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner ~~and Architect~~ that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 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 or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner ~~and the Architect~~ will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The ~~Architect~~ Owner will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The ~~Architect's~~ Owner's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the ~~Architect~~ Owner will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

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

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

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

§ 9.13 Access to Work

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

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner ~~and Architect~~ harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner ~~or Architect~~. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ~~Architect~~ Owner.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's~~ Owner's consultants, and ~~board members,~~ agents, ~~contractors,~~ 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~~ negligence, 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 which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 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 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ARCHITECT ~~Not Applicable~~

~~§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.~~

~~§ 10.2 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.~~

~~§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions~~

and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

~~§ 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.~~

~~§ 10.5 Based on the Architect's evaluations of the Work and 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.~~

~~§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.~~

~~§ 10.7 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.~~

~~§ 10.8 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 will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.~~

~~§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~

ARTICLE 11 SUBCONTRACTORS

§ 11.1 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.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner ~~and Architect~~ of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier who is not qualified, responsible, or licensed, and/or to whom the Owner ~~or Architect~~ has made reasonable written objection within ten business days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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 the Contract Documents, assumes toward the Owner ~~and Architect~~, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 12.2 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 activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall not be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, and Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect/Owner will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect/Owner will prepare a Change Order.

§ 13.3 The Architect/Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect/Owner and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

ARTICLE 14 TIME

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

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

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

§ 14.4 The date of Substantial Completion is the date certified by the Architect/Owner in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect/Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect/Owner may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the ~~Architect~~ Owner before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the records and data to substantiate its accuracy required by the ~~Architect~~ Owner. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner ~~and Architect~~, the Owner shall acknowledge ~~that~~ in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner ~~and Architect~~ with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner ~~and Architect~~ of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the ~~Architect~~ Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data and records substantiating the Contractor's right to payment that the Owner ~~or Architect~~ require requires; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials, supplies, and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing by Owner.

§ 15.3.3.1 With written approval of the Owner, materials may be stored at another location other than the Project site if properly identified as the property of the Owner and properly protected. Storage of material at the place of business of the vendor is not acceptable. Such payments shall be conditional upon the submission by the Contractor of one of the following: 1) receipts marked by the supplier as paid; 2) supplier's final waiver of lien listing specific materials involved; 3) invoice with copy of canceled check showing payment; or 4) such other evidence of payment as the Owner may require in lieu thereof to establish ownership of all items except those listed as miscellaneous materials below. For the aggregate of miscellaneous stored materials for which payment is requested and above proof of payment is not available, a complete list will be provided along with the affidavit of payment. Upon certification by the Owner's representative that the listed materials are suitably stored, payment can be made. Miscellaneous materials are defined as pipe, fittings, wire, conduit, nails, shingles, etc., normally stored as stock items in Contractor's warehouse. For materials stored other than at the construction site applicable insurance and transportation to the site shall be provided by the Contractor.

§ 15.3.4 The Contractor represents and warrants that title, rights, licenses, and ownership to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further represents and 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 other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 The Architect/Owner will, within seven (5) business days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect/Owner determines is properly due, or notify the Contractor and Owner of the Architect's/Owner's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect/Owner to the Owner, based on the Architect's/Owner's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's/Owner's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect/Owner. However, the issuance of a Certificate for Payment will not be a representation that the Architect/Owner has (1) made ~~exhaustive or continuous~~ on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; ~~or~~ and (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Architect/Owner 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/Owner's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect/Owner is unable to certify payment in the amount of the Application, the Architect/Owner will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect/Owner cannot agree on a revised amount, the Architect/Owner will promptly issue a Certificate for Payment for the amount for which the Architect/Owner is able to make such representations to the Owner. The

ArchitectOwner 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'sOwner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials, goods, products, supplies, 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.

§ 15.4.4 When either party disputes the Architect'sOwner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven five (5) business 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. The Owner shall withhold partial and final payments to the Contractor until the Contractor has paid all subcontractors, suppliers, laborers, vendors, and those furnishing services.

§ 15.5.2 Neither the Owner nor ArchitectOwner's representative shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 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.

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

§ 15.6 Substantial Completion

§ 15.6.1 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 and applicable laws so that the Owner can occupy or utilize the Work for its intended use.

§ 15.6.2 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 ArchitectOwner 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.

§ 15.6.3 Upon receipt of the Contractor's list, the ArchitectOwner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the ArchitectOwner determines that the Work or designated portion thereof is substantially complete, the ArchitectOwner will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the

Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the ~~Architect~~Owner will promptly make such inspection and, when the ~~Architect~~Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the ~~Architect~~Owner will promptly issue a final Certificate for Payment ~~stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.~~

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this ~~Contract or Agreement and~~ receipts in full covering all labor, materials, supplies, and equipment for which a lien could be filed, or 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 costs and reasonable attorneys' fees.

§ 15.7.3 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, plans, specifications, or applicable laws;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor, vendor, or 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 the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

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

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

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. Contractor shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent utilities. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or ~~Architect or~~ 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 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify governmental officials, the Owner ~~and Architect~~ of the condition. 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 shutdown, delay, and start-up.

§ 16.2.2 To the fullest extent permitted by law and up to the amount of insurance proceeds payable, the Owner ~~shall indemnify and hold harmless~~may reimburse the Contractor, Subcontractors, ~~Architect, Architect's~~Owner's consultants, and agents and employees of any of them ~~from and against~~for 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 16.2.1 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.

§ 16.2.3 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~~may reimburse the Contractor for all cost and expense thereby incurred.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall secure the appropriate payment, performance, surety, and fidelity bond(s) as required by applicable statutes. The Contractor shall purchase and maintain the insurance and bonds required by this Agreement and applicable laws from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

« »

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~« » (\$ « One Million Dollars » (\$ «1,000,000»)~~ each occurrence, ~~« » (\$ «Five Million dollars » (\$ «5,000,000 »)~~ general aggregate, and ~~« » (\$ «Five Million dollars » (\$ «5,000,000 »)~~ aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than ~~« » (\$ « »~~ Seven Hundred Thousand Dollars » (\$ «700,000 ») per person and Five Million dollars (\$5,000,000) per accident, for bodily injury, death of any person, and property

damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

§ 17.1.6 Employers' Liability with policy limits not less than ~~«→»(\$ «One Million Dollars» (\$ «1,000,000»))~~ each accident, ~~«→»(\$ «One Million Dollars» (\$ «1,000,000»))~~ each employee, and ~~«→»(\$ «Five Million dollars» (\$ «5,000,000»))~~ policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ~~«→»(\$ «One Million Dollars» (\$ «100,000»))~~ per claim and ~~«→»(\$ «Five Million dollars» (\$ «5,000,000»))~~ in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ~~«→»(\$ «One Million Dollars» (\$ «1,000,000»))~~ per claim and ~~«→»(\$ «Five Million dollars» (\$ «5,000,000»))~~ in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ~~«→»(\$ «One Million Dollars» (\$ «1,000,000»))~~ per claim and ~~«→»(\$ «Five Million dollars» (\$ «5,000,000»))~~ in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, ~~the Architect,~~ and the ~~Architect's Owner's~~ Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the ~~Architect Owner~~ and the ~~Architect's Owner's~~ Consultants, CG 20 32 07 04.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.14 Other Insurance Provided by the Contractor

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

Coverage

Limits

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

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

§ 17.2.2 Property Insurance

§ 17.2.2.1 The Owner ~~shall~~may purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, ~~Contractor, Subcontractors, and Sub-subcontractors in the Project~~ as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner ~~shall~~may purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties under its policy.

§ 17.2.2.5 Prior to commencement of the Work, the Owner ~~shall~~may secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner ~~waives~~does not waive all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 The ~~Owner and~~ Contractor waive all rights against (1) ~~each other~~Owner and any of ~~their~~its subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the ~~Architect~~Owner and ~~Architect's~~Owner's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses

are covered by ~~property~~ insurance required by this Agreement or other ~~property~~ insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The ~~Owner or~~ Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the ~~Architect, Architect's consultants,~~ Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner ~~waives~~does not waive all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.2.2.8 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, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner ~~shall~~may pay the ~~Architect and~~ Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the ~~Architect and~~ Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

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

| Coverage | Limits |
|-----------------------|--------|
| <u>Not applicable</u> | |

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Owner shall have the right to require the Contractor ~~to furnish~~prove it has obtained bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents and applicable laws on the date of execution of the Contract.

§ 17.3.2 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.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the ~~Architect~~Owner 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~~Owner's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within ~~one year~~two (2) 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 15.6.3, 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~~that promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after its knowledge and discovery of the condition. During the ~~one~~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~~does not waive the rights to require correction by the Contractor ~~and~~or to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

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

§ 18.5 The ~~one~~two-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by Indiana law, the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made periodically and at an appropriate time. 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~~Owner timely notice of when and where tests and inspections are to be made so that the ~~Architect~~Owner may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

↔
↔
↔
↔
↔
↔

«Owner's Superintendent, Business Manager, Facilities Director, & Treasurer »

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

↔
↔
↔
↔
↔
↔

«Registered Agent shown in IN Secretary of State records »

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

§ 19.7 Contractor acknowledges it has reviewed and agrees it will comply with and meet all requirements found in public works and contract statutes applicable to the Work and Project.

§ 19.8 Contractor represents it meets all applicable legal requirements to be awarded a contract by Owner and is not disqualified from being awarded a contract. The Contractor certifies it has been pre-qualified by the State of Indiana's Public Works Division Certification Board to perform the Work and furnish the services required by this Project.

§ 19.9 The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, guidelines, and ordinances including but not limited to including but not limited to 2 CFR § 200, 48 CFR § 52, Ind. Code 36-1-12, Ind. Code § 36-1-12.5, Ind. Code § 5-22, and all provisions required thereby to be included herein are hereby incorporated by reference. The Contractor certifies by entering into this Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments or reports to any governmental entity. The Contractor warrants it and personnel on Owner's property will have no current, pending or outstanding criminal, civil, or enforcement actions initiated by any governmental entity, and agrees it will immediately notify the Owner of any such actions. The Contractor warrants the Contractor and any subcontractors shall obtain and maintain all required permissions, permits, licenses, registrations, certifications, accreditations, and approvals, and shall comply with all employment, labor, EEOC, health, safety, construction, building, and environmental statutes, rules, or regulations in the performance of the Work for the Owner. The Contractor and any principals of the Contractor certify they have and will comply with the requirements under Ind. Code § 5-22-3-7. The Contractor certifies by entering into this Agreement neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision within the United States. Contractor is not disqualified from being awarded a contract under Ind. Code § 5-22-16.5. The Contractor hereby covenants and agrees to conduct adequate background checks and make a good faith effort to provide and maintain a tobacco, alcohol, and drug-free workplace while on Owner's property. The Contractor shall implement an employee drug testing program complying with Ind. Code § 36-1-12-24. The Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. If any steel or foundry products are to be used or supplied in the performance of the contract or subcontract, only steel or foundry products made in the United States shall be used or supplied in the performance of the contract or any of the subcontracts unless the head of the Owner determines, in writing, that the cost of steel or foundry products is considered to be unreasonable.

§ 19.10 The Contractor and any subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all work, services, and costs incurred under this Agreement. They shall make such materials available at their respective offices at all reasonable times during this Agreement, and for three (3) years from the date of final payment under this Agreement, for inspection by the Owner or its authorized designees. The Contractor acknowledges that may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with Indiana law, and audit guidelines specified by the Indiana State Board of Accounts and Owner.

§ 19.11 The Contractor is performing as an independent entity under this Agreement. No part of this Agreement shall be construed to represent the creation of an employment, agency, partnership, affiliation, association, or joint venture agreement between the parties. Owner will not assume liability for any sickness, injury, illness, and/or death to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the Contractor. The Contractor shall provide all necessary benefit plans, unemployment, and workers' compensation insurance for the Contractor's employees.

§ 19.12 The Owner will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as permitted by Indiana law.

§ 19.13 No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

§ 19.14 The undersigned attests, subject to the penalties for perjury, that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the ~~Architect~~Owner fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon ~~seven additional~~ten (10) business days' notice to the Owner ~~and the Architect~~, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead, expenses, and profit, costs incurred by reason of such termination, and damages.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 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 plans, specifications, applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 is unable to meet the designated Substantial Completion date

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the ~~Architect~~Owner that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor ~~seven~~five (5) business days' notice, terminate the Contract and take possession of the site and of all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the ~~Architect's~~Owner'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 ~~Architect~~Owner, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

~~The Owner may~~When the Owner makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. A determination by the Owner that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive. The Owner may also, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

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

«The Owner may be required for costs associated with Contractor developing plans and specifications, but will not be liable for any additional amount if Owner decides not to implement the Contractor's recommendations or retain Contractor to perform the Work. »

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this ~~Contract Agreement~~, including those alleging an error or omission by the ~~Architect Owner~~ but excluding those arising under Section 16.2, shall be referred initially to the ~~Architect Owner~~ for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the ~~Architect Owner~~ or 30 days after submission of the matter to the ~~Architect Owner~~, be subject to mediation as a condition precedent to binding dispute resolution.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the ~~Architect Owner~~ within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation ~~within sixty (60) days of a request for mediation~~ which, unless the parties mutually agree otherwise, shall be administered ~~by the American Arbitration Association~~ in accordance with ~~their Construction Industry Rule 2 Mediation Procedures of the Indiana Alternative Dispute Resolution Rules~~ in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this 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 the Construction Industry Arbitration Rules in effect on the date of this Agreement. 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 award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon ~~that~~ in accordance with applicable law in any court having jurisdiction thereof.

§ 21.7 Subject to the rules of the ~~American Arbitration Association or other applicable arbitration rules~~ Indiana Rules for Alternative Dispute Resolution, 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).

§ 21.8 Subject to the rules of the ~~American Arbitration Association or other applicable arbitration rules~~ Indiana Rules for Alternative Dispute Resolution, any party to an arbitration 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 a Claim not described in the written Consent.

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

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.11 Waiver of Claims for Consequential Damages

~~The~~Unless caused by gross negligence or willful misconduct, the Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this ~~Contract~~Agreement. 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 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 21.12 Clauses When Federal Funds are Used

Equal Opportunity Clause. During the performance of this contract, the Contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contractor further agrees it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work.

The Contractor agrees it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the Owner may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this Contract; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). Contractor will comply with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, Contractor will be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor will be required to pay wages not less than once a week. The Contractor will place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination. The Owner will report all suspected or reported violations to the Federal awarding agency. The Contractor will comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Owner will report all suspected or reported violations to the Federal awarding agency.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Contractor will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, and each contractor will be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

