

**INVITATION TO BID**

DATE November 17, 2023  
PROJECT: Former Marquette General Hospital Parking Structure  
580 West College Avenue  
Marquette, MI 49855

SCOPE: Asbestos Abatement and Demolition – Parking Structure for the Former  
Marquette General Hospital.

On behalf of the Northern Michigan University Foundation, through this Invitation to Bid, we are pleased to offer you the opportunity to bid on the above referenced project. The Bidding Instructions and Contractor Bid Form are included.

**Question are due by Friday, December 1, 2023, at 5 p.m. EST**

**Bids are due by Friday, December 15, 2023, at 5 p.m. EST, as reflected on the bid form.**

Bids are to be delivered to:

TriMedia Environmental and Engineering  
ATTN: Ryan Whaley  
830 W. Washington Street  
Marquette, MI 49855

Any questions regarding bid submittal procedures should be directed to Ryan Whaley at [rwhaley@trimediaee.com](mailto:rwhaley@trimediaee.com) or 906-228-5125. As a matter of transparency, questions and responses that may impact bids will be shared at [renewcollegeavemqt.org](http://renewcollegeavemqt.org).

Sincerely,

John F. List, Board President  
Northern Michigan University Foundation

Brad Canale, Chief Executive Officer  
Northern Michigan University Foundation

## **BID INSTRUCTIONS**

**BID** Friday, December 15, 2023, at 5 p.m. EST

**DUE:** Northern Michigan University Foundation

**OWNE** Ryan Whaley  
(906) 228-5125

**R:** rwhaley@trimediaee.com

**PRE-BID** rwhaley@trimediaee.com  
**QUESTIONS:** (906) 228-5125

**SUBMIT BID TO:** TriMedia Environmental and Engineering  
ATTN: Ryan Whaley  
830 W. Washington Street  
Marquette, MI 49855

## **BID DETAILS**

**PROJECT:** Former Marquette General Parking  
Structure 580 West College Avenue  
Marquette, MI 49855

## **BID FORMAT:**

Prepare and submit one copy of your bid package to the designee listed on the cover page. Each bid package must be organized and consist of the documents, listed below:

The following bid format is required:

- Cover Letter
- Section 1 Bid Forms (per Section 1 below)
  - A. Detailed Bid Form
  - B. Familial Disclosure Statement
  - C. Request for Qualifications
  - D. Bid Security
- Section 2 Clarifications / Exceptions (if any)
- Section 3 Additional Information

### **SECTION 1 – BID FORMS**

- For the following subsections, complete and attach the Bid Forms provided as Exhibit D through Exhibit H.

#### **Section 1A – Detailed Bid Form (Exhibit D)**

- Utilize the Bid Form Provided as Exhibit D to this Invitation to Bid.

- Please provide the Fees and Costs for the various components of the project listed, as a lump sum amount as indicated on the bid form.
- Acknowledge by checking the appropriate box that by submitting this bid that you agree with the contract terms as provided in the referenced documents.

**Section 1B –Familial Disclosure Statement (Exhibit E)**

- Complete and attach the Familial Disclosure Statement included as Exhibit E to this Invitation to Bid.

**Section 1C – Request for Qualifications Form (Exhibit F)**

- Complete in its entirety the Statement of Qualifications Form included as Exhibit F.
- Attach all required documents.
- Attach a PDF copy of the completed form to your bid in this Section 1C.
- All financial information provided will be kept confidential, except where such information is subject to review or audit by governmental agencies in conjunction with project funding.

**Section 1D – 5% Bid Security**

- Complete and attach a bid bond or certified check in the amount of 5% of the total bid for the project.

**Section 1E – Awareness and compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended**

- Read and complete in its entirety the Section 3 Contractor Plan

**Section 1F – Certification regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Exhibit I)**

- Read and complete the Certification regarding eligibility, included as Exhibit I.

**SECTION 2 – CLARIFICATIONS / EXCEPTIONS**

- Please detail any clarifications, exceptions, or exclusions to this Invitation to Bid (scope, schedule, fee, etc.)
- List any/all exceptions taken to the Contract Documents provided as Exhibit H. For each exception, alternative language must be proposed. OWNER reserves the right to reject any proposed alternative language.

Any exceptions that your firm takes to the terms and conditions listed must be specifically referenced in your bid. Provide in Section 2 of your bid alternative language that would be acceptable to each provision.

The prevalence of these exceptions will be considered in reviewing the bid and in the final selection of the DEMOLITION CONTRACTOR for the project. Bids that do not acknowledge these agreements or do not provide specific alternative language

may be rejected.

Any exceptions to the terms and conditions contained in the Contract, or any other special consideration or conditions listed by the DEMOLITION CONTRACTOR relative to this Invitation to Bid or the form contract will not be binding upon OWNER unless expressly accepted by OWNER and incorporated into the final Contract.

### **SECTION 3 – ADDITIONAL INFORMATION**

- Please include any additional relevant information.

#### **SITE VISIT:**

Site visits and tours of the facility will be offered by appointment. Contact Ryan Whaley to schedule site visits.

#### **BUILDING PLANS:**

Building plans may be viewed during site visits.

#### **ENVIRONMENTAL REPORTS:**

The following reports are available for informational purposes only at the following secured site: [renewcollegeavemqt.org](http://renewcollegeavemqt.org)

- Updated Phase I Environmental Site Assessment: September 15, 2022
- Limited Phase II Environmental Site Assessment: December 15, 2021

OWNER makes no warranty or representation about the completeness of such reports for Bidder's purposes, including any Bidder interpretation or conclusion drawn from such reports, or the means, methods, techniques to be employed by Bidder in performing the work and the safety precautions incident thereto.

#### **EXHIBITS:**

The following Exhibits are attached:

- A. Demolition Phasing Map
- B. Demolition and Abatement Specifications
- C. Campus Map
- D. Detailed Bid Form
- E. Familial Disclosure Statement
- F. Request for Qualifications
- G. Professional Liability Insurance
- H. AIA Standard Agreements Between OWNER and Contractor for project-type jobs
- I. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

RETAINAGE:

Ten percent (10%) retainage will be withheld from payments to the DEMOLITION CONTRACTOR until substantial completion.

PERMITS:

The DEMOLITION CONTRACTOR will apply for all permits needed to satisfy the local and/or State authority having jurisdiction.

DEMOLITION PLANS:

The DEMOLITION CONTRACTOR will be responsible for any demolition plans, including engineering, that may be required.

SITE SECURITY:

The DEMOLITION CONTRACTOR will provide all security fencing and signage as part of the bid. Signage will include specific language alerting the public of the dangers of a demolition site, forbidding trespassing, and requiring OSHA mandated PPE for authorized personnel. Security fencing will be a minimum of six feet tall and constructed of panel or chain link.

INSURANCE:

The DEMOLITION CONTRACTOR will, at all times, maintain in force Worker's Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, Commercial General Liability Insurance, and Professional Liability Insurance (per Exhibit G).

BONDS:

The DEMOLITION CONTRACTOR will be required to provide a 5% bid bond or certified check in the amount of 5% of the total bid for the project. AIA A312-2010 Performance and Payment Bonds will be required for the Project.

SITE UTILITIES:

The DEMOLITION CONTRACTOR will carry all necessary site utilities as part of the bid.

GRANT COMPLIANCE:

Funding for demolition is made in part by an appropriation by the State of Michigan administered by the State Land Bank Authority (SLBA Grant). The DEMOLITION CONTRACTOR agrees to comply with all requirements of the SLBA Grant including:

- Equal Opportunity Employer, including Executive Order (E.O.) 11246 of September 24, 1965 entitled "Equal Employment Opportunity" as amended by E.O. 11375 of October 13, 1967, and as supplemented by the Department of Labor regulations.
- Compliance with the Copeland "Anti-Kickback" Act. (18 U.S.C. 874) as supplemented by the Department of Labor regulations.
- Access to project records and audit rights to all books and documents.
- Retain project records for three years.
- Compliance with all federal environmental regulations.
- Follow energy efficient mandatory standards and policies.
- Compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended.
- Adhere to prevailing wage requirements under the Davis-Bacon Act if applicable.

AGREEMENT:

The form of agreement between the Project Manager and the DEMOLITION CONTRACTOR shall

be for the work described in the base bid submitted. The AIA document A101 “Standard Form of Agreement between OWNER and Contractor” (2017), as modified, and AIA document A201 “General Conditions of the Contract for Construction (2017), as modified will be used as the basis for the form of the contract (samples attached as Exhibit H).

**BID TERM:**

The DEMOLITION CONTRACTOR agrees to hold this bid open for a period of ninety (90) days following the closing time for receipt of bids.

**INSTRUCTION TO BIDDING DEMOLITION CONTRACTORS:**

This Invitation to Bid does not commit OWNER to award a contract or to undertake any financial obligation whatsoever with respect to the requirement referred to herein. OWNER reserves the right to reject any bid with or without cause, to negotiate with any source it has selected as qualified, to not award a contract, or to award one or more contracts. OWNER further reserves the right to waive any irregularity or informality in this bid process or any bid, and the right to award the Contract to any DEMOLITION CONTRACTOR other than those submitting the best financial bid (low bidder). OWNER reserves the right to accept or reject, without consideration, any bid which arrives late, provided such bid is received before opening of all bids. OWNER reserves the right to request additional information from any or all bidding contractors. In addition, notice is hereby given of the possibility that award may be made without discussion of the bid. In the event DEMOLITION CONTRACTOR’s bid is accepted by OWNER and DEMOLITION CONTRACTOR asserts exceptions, special considerations or conditions after acceptance, OWNER, in its sole and absolute discretion, reserves the right to thereafter reject the Bid and award a contract another bidding DEMOLITION CONTRACTOR. Therefore, DEMOLITION CONTRACTOR should submit its best bid initially from both technical and cost standpoints.

**CONFIDENTIALITY:**

YOUR BID AND ANY MODIFICATIONS THERETO SHALL BE SUBMITTED ONLY TO THE CONSULTANT. FAILURE TO COMPLY STRICTLY WITH OWNER’S INSTRUCTIONS REGARDING THE CONTENT AND MANNER OF SUBMISSION OF BID INCLUDING, WITHOUT LIMITATION, DISCLOSURE OF ANY INFORMATION IN THE BID OR MODIFICATIONS THEREOF TO ANY THIRD PARTY OR OTHER NORTHERN MICHIGAN UNIVERSITY FOUNDATION EMPLOYEES WITHOUT THE EXPRESS, PRIOR WRITTEN APPROVAL OF THE UNDERSIGNED, SHALL RESULT, AT OWNER’S SOLE DISCRETION, IN THE IMMEDIATE DISQUALIFICATION OF THE DEMOLITION CONTRACTOR.

The time required for completing the project will be a factor in the award of the contract. DEMOLITION CONTRACTOR shall indicate time in number of weeks required to complete the project.

The successful bidder should anticipate starting Phase 3 demolition to begin no later than August 1, 2024.

**A complete schedule of values form will be required with bid submission. A full project schedule shall be delivered with the bid submission.**

Bids shall be submitted on the forms provided with all spaces in the forms completed. Bidding

contractors will be notified of the bid results no later than thirty (30) days after the due date. No bids may be withdrawn after the scheduled closing time for receipt for a period of ninety (90) days. The OWNER reserves the right to reject any and all bids and waive all formalities.

## SECTION B-1

### BUILDING DEMOLITION

#### 1.1 SUMMARY

This Section includes building demolition by hand or mechanical methods as applicable. Demolition and debris removal of all materials associated with the campus demolition, as described in this section, shown on drawings, or identified at the site, shall be executed under the provisions of this Section, and other applicable sections of these specifications.

The asbestos abatement and Universal Waste disposal of item including but not limited to light ballasts, and mercury switches will be conducted by the DEMOLITION CONTRACTOR. More detail regarding the asbestos, lead/cadmium paint and Universal Waste can be found in Section B-3 and Section B-4. The parking structure shall be demolished in entirety, including all footings, foundations, basement structures, mechanical systems, and any and all building contents. Any site pavements shall also be demolished and removed, including but not limited to asphalt, concrete, sidewalks, parking areas, driveways, and subsurface utilities to point of entry to the property or as approved by the OWNER and/or utility owner. All other site improvements shall be removed, including signs.

#### 1.2 SCOPE

The Work covered under these specifications consists of furnishing all labor, materials, and equipment, and performing all operations necessary for demolition of specified on-site structures, including tear-down, removal, disposal/reuse of demolition debris, subsurface utilities, and restoring the site to specified grade using a suitable material as designated herein. Demolition cannot begin until OWNER REPRESENTATIVE/CONSULTANT verifies that all asbestos has been properly abated.

#### 1.3 PERFORMANCE

##### 1.3.1 Utility Clearance

The DEMOLITION CONTRACTOR shall be responsible for notifying all local utilities regarding underground excavating activities, if required, and ensuring all underground utilities are marked and staked prior to initiation of any excavating activities. The DEMOLITION CONTRACTOR shall be responsible for maintaining safe distances from underground and overhead utilities when using power equipment and hand dig when excavating in an area where an underground utility is located.

##### 1.3.2 Utility Disconnections

The DEMOLITION CONTRACTOR is responsible for all coordination with utility companies and for obtaining all required approvals or permits, and to perform work in compliance with permits.



### 1.3.3 Care and Maintenance of Excavation

The DEMOLITION CONTRACTOR shall be responsible for the care, maintenance and safety of any open excavation or building to be demolished. The DEMOLITION CONTRACTOR shall ensure that no unauthorized personnel are near the demolition area and shall provide barricades as necessary. The site shall be secured prior to the DEMOLITION CONTRACTOR leaving the site at days end.

### 1.3.4 Site Restoration

The DEMOLITION CONTRACTOR shall furnish all labor and equipment and shall perform all operations necessary to restore the site to its pre-existing grade using materials specified in Paragraph 1.4.4.1. Compaction tests will be performed by others as needed.

#### 1.3.4.1 Backfill Materials

To the extent practical, the DEMOLITION CONTRACTOR shall backfill all excavations with on-site material, equivalent to materials defined below. Off-site material may be imported as approved by OWNER REPRESENTATIVE/CONSULTANT. If off-site material is required to restore the site to grade, it must comply with the following:

Common fill shall be mineral soil substantially free from organic and unsuitable materials and free from rock or gravel larger than 2 inches in diameter. Common fill shall be allowed in locations 4 feet or more below grade. MDOT Class II granular material shall be used in all locations less than 4 feet below grade.

#### 1.3.4.2 Backfilling

Backfill excavations as soon as reasonably possible after completing excavation of an area. Grade to eliminate rough, low, or soft areas, and to ensure positive drainage. Backfill will be compacted to ninety-five percent (95%) of the maximum density, in maximum one-foot (1') lifts.

Protect newly graded areas from traffic and erosion. Re-compact and regrade settled, disturbed and damaged areas as necessary to restore quality, appearance, and condition of work.

#### 1.3.4.3 DEMOLITION CONTRACTOR Responsibility

In addition to cleanup and restoration of the project areas, the DEMOLITION CONTRACTOR shall be responsible for cleanup and restoration of any public or private operations outside the project limits which have been damaged and/or altered by their operations or negligence

of their employees and SUBCONTRACTORS. Cleanup and restoration of these areas shall be at no cost to the OWNER. Cleanup and restoration shall be to the original condition or better.

#### 1.3.4.4 Statement of Visual Inspection

Prior to application for final payment, submit a statement of visual inspection signed by the DEMOLITION CONTRACTOR's competent person/supervisor. Include the following:

- a. Name of licensed contractor conducting work.
- b. Name, signature, and title of on-site supervisor.
- c. Name, location, and start and finish date of demolition work.
- d. Current date.
- e. Statement that the work was completed according to applicable federal, state, and local laws, and these specifications.
- f. Statement that the Demolition Firm's field supervisor has visually inspected the work site and has found no remaining demolition debris that was part of the scope of work.

### **1.4 QUALITY ASSURANCE**

- 1.4.1 Pre-Qualified Disposal Organization: The DEMOLITION CONTRACTOR must utilize appropriately qualified disposal and/or recycling facilities.
- 1.4.2 Regulatory Requirements: Make all necessary notifications to the appropriate federal, state, and local agencies.
- 1.4.3 Pre-Demolition Meeting: Approximately one (1) week prior to scheduled start of the demolition project, the DEMOLITION CONTRACTOR shall hold a pre-demolition meeting with the OWNER or the OWNER REPRESENTATIVE/CONSULTANT.

The meeting agenda will include a review of the scope of work, demolition methods to be used, review of the DEMOLITION CONTRACTOR's initial submittals, and a walk-through survey of the site, if appropriate.

### **1.5 BUILDING DEMOLITION, GENERAL**

- 1.5.1 Conduct demolition activities in a manner that fully protects employees of the DEMOLITION CONTRACTOR and any SUBCONTRACTOR, the general public, and other on-site occupants from exposure to asbestos, lead-based paint,

dust, and other safety and health hazards.

1.5.1.1 Demolition project shall be directly supervised by a competent person as described in this specification.

1.5.1.2 The competent person must complete responsibility checklists throughout all phases of the project.

1.5.2 Protect adjacent areas, materials and surfaces from damage due to demolition operations, including but not necessarily limited to the following:

1.5.2.1 Water damage.

1.5.2.2 Dirt, dust and debris.

1.5.2.3 Abrasion.

1.5.2.4 Cuts and scratches.

1.5.2.5 Holes from fasteners for temporary barriers.

1.5.3 All demolition work shall be conducted within a secure area that complies with the following requirements:

1.5.3.1 Post a sufficient number of signs at the demolition area and at every work area entrance. Place banners, if necessary, to secure open areas. Include information on signs indicating location of demolition activities.

1.5.3.2 Allow only authorized, properly protected personnel to enter the secure area. Immediately report unauthorized individuals entering the work area to the OWNER or the OWNER REPRESENTATIVE/CONSULTANT.

1.5.4 Maintain at the job site and post the following documents:

1.5.4.1 Copy of EGLE/LEO notification.

1.5.4.2 Employee respiratory protection program.

1.5.4.3 Michigan Right-To-Know poster.

1.5.4.4 Material Safety Data Sheet locator.

1.5.4.5 Company standard operating procedure.

1.5.4.6 This specification Section.

1.5.4.7 Safety Data Sheets for products used on job.

1.5.5 Use the following engineering controls and work practices for all demolition operations:

1.5.5.1 Wet methods to control fugitive dust during demolition and clean-up, except where determined to be infeasible.

1.5.5.2 Prompt clean-up and disposal of demolition debris.

## **1.6 DEMOLITION DEBRIS DISPOSAL/REUSE**

- 1.6.1 All demolition debris shall be disposed of in accordance with Federal, State and local laws and regulations.
- 1.6.2 All scrap metal/steel shall be properly disposed of or recycled in accordance with all applicable federal, state, and local regulations.
- 1.6.3 DEMOLITION CONTRACTOR shall provide OWNER or OWNER REPRESENTATIVE/CONSULTANT with documentation verifying the quantity of debris and location of disposal/reuse.
- 1.6.4 DEMOLITION CONTRACTOR shall submit the following documentation:
  - a. Copies of weigh tickets for all loads taken to the landfill.
  - b. Summary letter listing the quantity of material taken to the disposal location(s), including landfill, gravel pit, another project, etc.

## **1.7 FIELD QUALITY CONTROL**

- 1.7.1 Pre-Notification of OWNER: To permit adequate time to coordinate activities at the project site, notify the OWNER or OWNER REPRESENTATIVE/CONSULTANT not less than five (5) calendar days prior to planned start of all demolition operations.
- 1.7.2 Air Monitoring: DEMOLITION CONTRACTOR shall provide the OWNER REPRESENTATIVE/CONSULTANT with a safe working area and adequate time to monitor ambient air as requested by the OWNER REPRESENTATIVE/CONSULTANT.
- 1.7.3 Fugitive Dust: DEMOLITION CONTRACTOR shall implement work practices and install engineering controls to prevent fugitive dust emanating from demolition activities in noxious quantities. If OWNER or OWNER REPRESENTATIVE/CONSULTANT determines that fugitive dust at the project site is not being properly controlled, the DEMOLITION CONTRACTOR's on-site representative shall stop work and implement additional dust control measures.
- 1.7.4 Unexpected Environmental Impacts: DEMOLITION CONTRACTOR shall stop work immediately and promptly notify OWNER REPRESENTATIVE/CONSULTANT if any suspect environmental contaminants are encountered. DEMOLITION CONTRACTOR shall, at the direction of OWNER REPRESENTATIVE/CONSULTANT, secure the demolition area and relocate to another area of the site to resume project activities allowing OWNER REPRESENTATIVE/CONSULTANT access to assess potential environmental impacts at the suspect contaminated area. DEMOLITION CONTRACTOR may

resume work in the affected area upon authorization of OWNER REPRESENTATIVE/CONSULTANT.

- 1.7.5 Inspection: If during the project, the OWNER or OWNER REPRESENTATIVE/CONSULTANT determine that work practices either violate applicable rules and regulations or endanger employees, the DEMOLITION CONTRACTOR's on-site representative shall stop operations immediately and take corrective action.

## SECTION B-2

### EROSION AND SURFACE WATER CONTROL

#### 1.1 DESCRIPTION

- A. DEMOLITION CONTRACTOR shall provide the necessary means to control surface water and erosion in accordance with all Federal, State and Local regulations and shall obtain the Soil Erosion and Sedimentation Control Permit if required. The DEMOLITION CONTRACTOR is responsible for all requirements associated with the Soil Erosion and Sedimentation Control Permit, including preparation and submission of a plan, if required.
- B. The requirements included in this Section are minimum requirements to be met, notwithstanding the requirements of the Soil Erosion and Sedimentation Control Permit.
- C. Work shall include the provision and installation of all materials, equipment and labor necessary for the removal of surface water and for the provision of erosion and sediment control structures as required.

#### 1.2 SUBMITTALS

- A. Erosion, sedimentation, and surface water control shall be outlined as part of the requirements of the Work Plan.
- B. A copy of any approved Soil Erosion and Sedimentation Control Permit obtained by the DEMOLITION CONTRACTOR shall be submitted to the OWNER REPRESENTATIVE/CONSULTANT and shall be posted on site.

## SECTION B-3

### ASBESTOS ABATEMENT AND DISPOSAL

#### PART 1. GENERAL

##### 1.1 SUMMARY

This Section includes removal and disposal of asbestos-containing materials (ACM) by enclosure, glove bag, or entire structures methods as applicable. Demolition and debris removal of all ACM identified by provisions of this Section, shown on drawings, or identified at the site, shall be executed under the provisions of this Section, and other applicable sections of these specifications.

##### 1.2 REFERENCES

A. Asbestos containing material must be managed in accordance with provisions stipulated in Michigan LEO, Part 602 – Asbestos Standards for Construction, and United States Occupations Safety and Health Organization (US OSHA) Safety and Health Regulations for Construction, Part 29 Code of Federal Regulations 1926.1101.

##### 1.3 DEFINITIONS

A. Asbestos Abatement Firm: Firm engaged to perform actual removal and disposal work, either the DEMOLITION CONTRACTOR or a subcontractor to the DEMOLITION CONTRACTOR.

B. Asbestos Containing Material: The term "asbestos containing material" is abbreviated as ACM.

C. CONSULTANT: Firm engaged by OWNER to identify and measure asbestos containing materials, or to inspect abatement operations, including monitoring of air quality, if applicable.

##### 1.4 SUBMITTALS

A. Initial Submittals: Submit the following documents to CONSULTANT/OWNER as required:

1. License from the State of Michigan in accordance with Act 135 1986 (Asbestos Abatement Contractors Licensing Act).
2. Copy of Notification of Intent to Renovate/Demolish sent to appropriate federal, state, and local agencies, if applicable.
3. Proposed Abatement Work Schedule, including mobilization date, working hours, schedule per week, work locations, length and number of shifts, foreperson's name, and crew size.

4. Proposed Abatement Work Plan, including the work locations, type of work in each location, and proposed abatement methods.
  5. Transportation/Disposal Firm Certificate: Letter, signed by DEMOLITION CONTRACTOR, certifying that a listed, approved Transportation/Disposal Firm will be used. Include name and address of Transportation/Disposal Firm.
- B. Waste Disposition Submittals: Submit to CONSULTANT/OWNER a signed waste shipment record stating that asbestos waste has been properly disposed in a landfill indicated in the “Quality Assurance” section of this specification Section. Submit the following:
1. Receipts (trip tickets) from approved landfill.
  2. Asbestos Waste Shipment Record, as follows:
    - a. Prior to removing ACM from the project site, record quantity and/or volume of ACM and verify with OWNER.
    - b. Ensure that the landfill operator provides a signed copy of the waste shipment record to the OWNER within 35 days of the date that ACM is removed from the project site. If waste is not transported directly from the project site to the landfill, the waste shipment record shall reflect each transfer.
    - c. The CONSULTANT/OWNER will not make final payment prior to receipt of signed waste shipment record.
- C. Contract Closeout Submittals: Comply with the following requirements in addition to the requirements elsewhere in the specifications.
1. Statement of Visual Inspection: Upon substantial completion of abatement activities, submit a statement of visual inspection signed by the DEMOLITION CONTRACTOR’s competent person/supervisor. Include the following:
    - a. Name of licensed contractor conducting work.
    - b. Name, signature, and title of on-site supervisor.
    - c. Name, location, and start and finish date of abatement work.
    - d. Current date.
    - e. Statement that the work was completed according to applicable federal, state, and local laws, and these specifications.
    - f. Statement that the Asbestos Abatement Firm's field supervisor has visually inspected the work site and has found no dust, debris, or other suspect ACM that were part of the scope of work.



2. Asbestos Removal Report: Submit *Asbestos Removal Report* to CONSULTANT/OWNER prior to DEMOLITION CONTRACTOR's application for final payment. Include a schedule of items removed, summarizing the types and quantities of ACM removed from the Project Area.

## **1.5 QUALITY ASSURANCE**

A. Pre-Qualified Disposal Organization: Engage an appropriate Type II Landfill licensed and permitted to accept ACM wastes.

1. Regulatory Requirements: Make all necessary notifications to the appropriate federal, state, and local agencies.

a. The National Emission Standards for Hazardous Air Pollutants (NESHAP), Asbestos regulation 40 CFR 61, Sub-Part M requires that if at least 80 linear meters (260 linear feet) of friable asbestos materials, at least 15 square meters (160 square feet), or 1 cubic meter (35 cubic feet) of friable asbestos materials, or other facility components are stripped or removed while renovating a facility, all the requirements of section 61.145 apply.

b. When applicable, notify the Michigan Department of Environment, Great Lakes, and Energy (EGLE), the Michigan Department of Labor and Economic Opportunity (LEO), and appropriate state and local regulatory agencies. No work shall be conducted without notification to all regulatory authorities having jurisdiction.

B. Pre-Abatement Meeting: Prior to the scheduled start of the abatement project, the CONSULTANT/OWNER will schedule a pre-abatement meeting with the individuals indicated below:

1. CONSULTANT representative.
2. Asbestos Abatement Firm representative.
3. OWNER representative.

C. The meeting agenda will include:

1. Review of the scope of work.
2. Removal methods to be used.
3. Review of DEMOLITION CONTRACTOR's initial submittals.
4. A walk-through survey of the site, if appropriate.

## **PART 2. PRODUCTS**

## **PART 3. EXECUTION**

### **3.1 ASBESTOS ABATEMENT, GENERAL**

A. Conduct asbestos abatement operations in a manner that fully protects DEMOLITION CONTRACTOR's and any subcontractor's employees, the general public, building occupants, and potential follow-on renovation or demolition contractors and personnel from exposure to asbestos and other safety and health hazards.

1. Asbestos abatement projects shall be directly supervised by a competent person as described in 29 CFR 1926.1101.

2. The supervisor/competent person shall provide a weekly record of abatement activities to the CONSULTANT/OWNER.

B. Protect adjacent areas, materials, and surfaces from damage due to demolition operations, including but not necessarily limited to the following:

1. Water damage.
2. Dirt, dust, and debris.
3. Abrasion.
4. Cuts and scratches.
5. Holes from fasteners for temporary barriers.

C. All asbestos work shall be conducted within a regulated area that complies with the following requirements:

1. Post a sufficient number of signs required by 29 CFR 1926.1101 at the asbestos abatement area and at every work area entrance, so that tenants, OWNER's personnel, and other DEMOLITION CONTRACTOR's employees have an opportunity to take protective measures before potentially exposing themselves to asbestos. Place barriers if necessary to secure open areas.

2. Allow only authorized, properly protected personnel to enter the regulated area. Immediately report unauthorized individuals entering the work area to the CONSULTANT/OWNER.

D. When required, provide employees and inspectors authorized to enter the regulated area with protective work clothing consisting of disposable Dupont "Tyvek" (or equivalent) full body coveralls, head covers, boots, and other necessary safety gear, including a hard hat and eye protection.

E. Provide respiratory protection to employees as required by current OSHA regulations including 29 CFR 1910.134 and 1926.1101.

1. Provide asbestos abatement workers with appropriate respirators with high efficiency particulate air (HEPA) filters for adequate protection during ACM removal operations. Respiratory protection may be downgraded if negative exposure assessment indicates that less protection is required.

2. A half-face respirator or appropriate respirator protection must be worn while tearing down and setting up enclosures, while glove bagging, and during pre-cleaning and post-cleaning

work.

3. Do not allow respirators to be pulled away from faces while in the work area.

F. Maintain at the job site and post the following documents:

1. Copy of EGLE/LEO notification.
2. Employee respiratory protection program.
3. Michigan Right-To-Know poster.
4. Company standard operating procedure.
5. This Specification Section.
6. Safety Data Sheets for products used on job.
7. 29 CFR 1926.1101.
8. 40 CFR, Part 61 (NESHAP).
9. The foreperson's or supervisor's Contractor/Supervisor Accreditation Certificate.
10. State of Michigan Accreditation Certificates and medical approval for each worker.

G. Use the following engineering controls and work practices for all asbestos abatement operations, regardless of measured exposure levels:

1. Vacuum cleaners equipped with HEPA filters to collect all asbestos-containing dust and debris.

2. Wet methods to control exposures during asbestos removal and clean-up, except where proven to be infeasible.

3. Prompt clean-up and disposal of asbestos-contaminated wastes and debris in leak-proof containers.

4. Establish a decontamination area, adjacent and connected to the regulated area, if the Project requires the removal of more than 25 linear feet, or 10 square feet of thermal systems insulation or surfacing ACM.

5. Establish an equipment area adjacent to the regulated area if the Project requires the removal of less than 25 linear feet or 10 square feet of thermal systems insulation or surfacing ACM.

H. *Do not* use any of the following equipment or work practices during asbestos abatement operations, regardless of measured exposure levels.

1. High-speed abrasive disc saws not equipped with point-of-cut HEPA ventilation or HEPA filtered exhaust air enclosures.

2. Blowing with compressed air to remove asbestos-containing materials.

3. Dry sweeping, shoveling, or other dry methods to clean up asbestos-containing dust and debris.

4. Employee rotation as a means of reducing employee exposure to asbestos.

### **3.2 ASBESTOS REMOVAL BY FULL ENCLOSURE METHOD**

A. Preparation of the Work Area: Complete the following preparation work prior to beginning asbestos removal operations:

1. Install critical barriers over each opening into the regulated area. The following requirements are in addition to, not in lieu of, other indicated surface and object protection requirements:

- a. Seal each opening between the work area and adjacent areas with not less than 2 layers of 6-mil polyethylene sheeting. Use an expanding poly-urethane foam material or equivalent to seal areas with large numbers of pipes, conduits, and beams. Openings include, but are not necessarily limited to, windows, skylights, doorways, elevator hoistway openings, corridor entrances, drains, ducts, grills, grates, and diffusers.

- b. Seal intake and exhaust vents and duct seams within the regulated area with not less than two layers of 6-mil polyethylene sheeting.

2. HVAC System Shutdown: OWNER's maintenance personnel will shut down heating, cooling, and air conditioning systems when necessary. Coordinate scheduling with OWNER's personnel and provide 72 hours notice to the OWNER prior to planned shut-down.

3. Protection of Surfaces and Objects: The following requirements are in addition to, not in lieu of, indicated work area sealing requirements. Cover the following surfaces and objects as follows:

- a. Protect all surfaces beneath all removal activity. Remove moveable objects from the work area and cover fixed objects with impermeable drop cloths or plastic sheeting with edges securely sealed with tape.

- b. Cover open tanks with plywood or other solid material.

- c. Provide clean, fresh air to mechanical equipment, where required to maintain proper performance of equipment.

- d. Fully pre-clean all covered surfaces with amended water and a HEPA vacuum.

- e. Cover walls with not less than two layers of 4-mil polyethylene sheeting. Construct free standing enclosure walls of not less than 6-mil polyethylene sheeting, with supports spaced not more than 3 feet on-center.

- f. Cover floors with not less than two layers of 6-mil polyethylene sheeting. Avoid seams where possible. If seams are necessary, overlap not less than 12 inches and tape joints. Extend

sheeting 12 inches up the sidewalls, leaving no seams at the wall and floor joint. Immediately repair punctures and leaks and clean up seepage.

4. Cleaning: Do not use cleaning methods that raise dust, such as sweeping or using vacuum cleaners not equipped with HEPA filters. Do not disturb asbestos materials during pre-cleaning phases.

a. During abatement activities, treat water removed from the enclosure as asbestos contaminated, either by filtering or disposing as asbestos waste. Fully seal floor drains.

5. Deactivate or install ground-fault circuit interrupters on each electrical circuit within the enclosure.

6. Construct a three-chambered decontamination facility that is adjacent to and connected to the regulated area, and that consists of an equipment room, a shower room, and a clean room in series. If decontamination facilities are exposed to weather, construct with lumber and exterior grade plywood. Secure the facility when not in use.

a. Supply the equipment room with properly labeled impermeable bags and containers for the containment and disposal of contaminated protective equipment.

b. Construct showers that comply with the requirements of 29 CFR 1910.141 (d) (3), with the shower room adjacent to both the equipment room and the clean room. Filter water waste and shower water through a 5-micron filter or remove water from site as asbestos waste.

c. Equip the clean room with a locker or appropriate storage container for each employee.

7. Employee Decontamination Facilities: Comply with the following requirements:

a. Access the work area only through an approved decontamination system. Lock or block other entrances. Seal emergency exits (for use during a fire or accident) with polyethylene sheeting and tape.

b. Seal the waste pass-out, except during the removal of asbestos waste from the enclosure.

c. Entrance To the Regulated Area: Employees shall enter the decontamination area through the clean room, remove and store clothing, and put on protective clothing and respiratory protection before passing through to the equipment room.

d. Exit From the Regulated Area: Employees shall exit the regulated area by removing gross contamination and debris from their protective clothing. The clothing shall be removed and disposed of in the equipment room into labeled impermeable bags or containers. Employees shall then shower and enter the clean room before changing into street clothes.

8. Local Exhaust Ventilation: Maintain portable air filtration units with a HEPA filter in use during asbestos abatement operations requiring enclosures. Units shall conform to OSHA Standard 1926.1101, Appendix F, and shall be designed in accordance with 40 CFR 61, Subpart M Sections 61.152 and 61.153.

a. Exhaust directly to the building exterior. Provide backup ventilation units in adequate number at each removal enclosure. Start-up ventilation units prior to initiating asbestos removal operations and run until the OWNER has approved their shut-down, after cleaning, visual inspection, sampling, and tear-down.

b. Direct air movement within the enclosure away from the employees' work area and toward the air filtration device.

c. Provide not less than 4 air changes per hour within the enclosure.

d. Within the enclosure, through the period of its use, maintain a pressure differential of minus 0.02 water gage with respect to ambient conditions outside the enclosure. CONSULTANT/OWNER has authority to stop work if negative pressure deviates from the minus 0.02. In this case, work should not resume until negative pressure is re-established in accordance with requirements.

9. Visually inspect the enclosure for breaches and smoke-test for leaks periodically. Make all modifications to the enclosure prior to starting removal work.

B. Asbestos Removal Operations: Comply with the following requirements for asbestos removal operations:

1. Immediately preceding asbestos removal, apply a fine mist of amended water (water and wetting agent) to the ACM and the surrounding area. Keep surrounding areas wet by spraying periodically with amended water. Maintain a high humidity environment to assist in fiber settling.

2. Remove asbestos material using two-person teams, on staging platforms if necessary.

3. Remove wet asbestos material as intact sections or components. Carefully lower material to the floor or place directly into container. Never drop or throw asbestos material on the floor.

4. At working heights between 15 and 50 feet above the floor, place removed ACM in containers at the elevated levels and lower to floor, or place onto inclined chutes or scaffolding for subsequent collection and placement into containers. Clean all debris at the completion of each workday or work shift.

5. Once the ACM is at ground level, pack in labeled 6-mil polyethylene bags, wet and, if appropriate, hold in drums prior to starting the next section.

6. Use double layer (two sealed and labeled 6-mil thick bags) for storage and

transportation of asbestos waste. Standing water shall be present in package.

7. Wrap large components removed intact in two layers of 6-mil polyethylene sheeting, label, and secure with tape for transport to the landfill. Comply with all wetting requirements.

8. Treat wires, hangers, steel bands, nails, screws, metal lath, tin sheeting, and similar sharp objects as items that pose puncture risk. They should be removed with asbestos material as asbestos waste. Place in drums or similar waste packaging for disposal.

9. Label containerized asbestos waste in accordance with OSHA, EPA, and Department of Transportation regulations, as follows:

a. Label each container with OSHA label that contains the following information:

DANGER  
CONTAINS ASBESTOS FIBERS  
AVOID CREATING DUST  
CANCER AND LUNG  
DISEASE HAZARD

b. Label each container with OWNER's and Asbestos Abatement Firm's names and addresses as required by NESHAP. OWNER's address is 1401 Presque Isle Ave, Marquette, MI 49855.

c. Label each container with Class 9 Label required by DOT and identify waste as "RQ, Asbestos, Class 9, NA 2212, III."

10. Prepare a complete and accurate NESHAP Waste Shipment Record (special manifest). Ensure all information required by the U.S. Department of Transportation regulations is included. Under "special handling instructions" provide the required DOT identification information: RQ Asbestos 9, NA 2212, PG III.

a. Do not remove waste from site until CONSULTANT/OWNER has reviewed and verified the shipment record.

11. Remove containerized asbestos waste daily from site, or store on site in a locked or secured location until ready for final disposal. Obtain approval of CONSULTANT/OWNER for the location of disposal containers. Outdoor waste containers shall be fully enclosed and locked. Mark vehicles used to transport waste during the loading and unloading of asbestos waste with a visible sign, as required by NESHAP.

12. The asbestos waste in each container must be thoroughly wet.

C. Post-Removal Operation Requirements: After completion of asbestos removal and clean-up operations, comply with the following requirements:

1. Provide minimum 48-hour notice to CONSULTANT/OWNER in advance of expected project completion in order to schedule the final inspection and aggressive air sampling, unless otherwise directed by CONSULTANT/OWNER. Work activities must be complete and the work areas completely dry to proceed with visual inspection and aggressive air sampling.

2. The Asbestos Abatement Firm representative, in presence of CONSULTANT/OWNER, shall inspect the entire work area, including work areas, decontamination unit, all plastic sheeting, seals over doorways, windows, and all other openings, for the presence of asbestos containing material.

a. If any suspect asbestos is found, DEMOLITION CONTRACTOR shall repeat final cleaning operation, until the visual inspection is satisfactory to the OWNER and the Asbestos Abatement Firm. Asbestos not scheduled to be removed as part of the project is exempt.

3. When results of aggressive air sampling exceed 0.01 fiber/cubic centimeter (cc) or background level, repeat cleanup operation until the area is below either 0.01 fibers/cc or background level.

4. After successful completion of the aggressive air sampling, lock down encapsulate may be applied to all walls, floors, ceilings, other exposed surfaces, and decontamination facilities.

a. Remove the inner polyethylene barrier that is not integral to maintaining negative pressure in the enclosure at this time, and post-abatement air samples will be collected and reviewed by CONSULTANT/OWNER. Immediately clean any asbestos-containing materials observed behind these secondary barriers.

5. When the post-abatement samples are in compliance and the CONSULTANT/OWNER has completed the visual inspection, the enclosure shall be removed.

a. Turn off HEPA filter exhaust units only after all barriers have been removed.

b. A final visual inspection will be conducted by the CONSULTANT/OWNER before the DEMOLITION CONTRACTOR is released from the removal site. The final inspection will include tape, polyethylene sheet, debris, and equipment.

### **3.3 REMOVAL BY NEGATIVE PRESSURE GLOVE BAG SYSTEMS**

A. Equipment and Materials: Use the following equipment and materials for each glovebag procedure:

1. Glovebags fabricated of 6-mil thick plastic without seams at the bottom.
2. HEPA vacuum system attached to the glovebag and run continuously during operation.
3. Protective suits and respirators.
4. Plastic sheeting.
5. Wetting agent.



6. Encapsulant.

B. Procedures: Comply with the following glovebag method requirements:

1. Wrap loose and friable material adjacent to the removal area in two layers of 6-mil thick plastic, or otherwise render intact.
2. Place plastic sheeting on the floor and equipment beneath each glovebag.
3. Wet-wipe or HEPA vacuum dust and dirt from insulation to be removed.
4. Install glovebags to completely cover the circumference of pipe or other structure where work is to be done.
5. Smoke-test glovebags for leaks. Seal leaks prior to use.
6. Insert and seal equipment that penetrates the bag (spray wands, vacuum nozzles) before insulation is disturbed.
7. Wet the insulation to be removed before, during, and after the removal.
8. Provide only bags capable of withstanding constant wetting and evacuation through a HEPA filtered device.
9. During the performance of glovebag operations removing thermal system insulation, or surfacing materials, employ not less than two persons, working simultaneously, for each task.
10. Wipe insulation residue from the pipe prior to application of an encapsulant.
11. Spray the pipe and glovebag with an encapsulant before the bag is removed from the pipe.
12. Seal exposed insulation ends with a heavy grade mastic.
13. Follow glovebag manufacturer's instructions.
14. Comply with requirements for asbestos waste disposal indicated in 'Removal by Full Enclosure Method' of this Section.

C. Unacceptable Conditions and Procedures: In general, do not use the glovebag method in conditions that prevent safe completion of the removal process. The following procedures are not allowed during glovebag removal:

1. Removing severely damaged insulation.
2. Overloading glovebag.
3. Sliding or moving insulation or glovebag along pipe.

4. Squeezing bags to remove air.
5. Placing glovebags on pipes or other surfaces that exceed 150 degrees Fahrenheit.
6. Using a glovebag more than once.

### **3.4 REMOVAL BY ENTIRE STRUCTURES METHOD**

A. The removal of entire structures without disturbing the asbestos is encouraged. An example is removal of asbestos covered pipe fittings by cutting out the entire pipe section scheduled for demolition.

1. Obtain CONSULTANT/OWNER approval of removal by entire structures method prior to starting the project.

B. Required Procedures: Comply with the following requirements applicable to removal of entire structures:

1. Properly wet all asbestos materials before starting procedure. Ensure that material stays adequately wet throughout the entire procedure by continuing application of water as needed.

2. Properly and fully wrap and label the structure before it is moved or cut out.

3. Provide the equipment necessary for asbestos debris cleaning on site during the procedure.

4. Comply with requirements for asbestos waste disposal indicated in "Removal by Enclosure Full Method" of this Section.

#### **3.05 Field Quality Control**

A. Pre-Notification of CONSULTANT/OWNER: To permit adequate time to coordinate activities at the project site, notify the CONSULTANT/OWNER not less than 48 hours prior to planned start of all removal operations, unless otherwise directed by the CONSULTANT/OWNER.

B. Air Monitoring: The CONSULTANT/OWNER will collect air samples and oversee the project to ensure compliance with applicable codes, regulations, and ordinances, including 29 CFR 1926.1101, NESHAP, and Michigan Public Act 135. The CONSULTANT/OWNER is not responsible for the work methods or directing work activities of the DEMOLITION CONTRACTOR. The DEMOLITION CONTRACTOR is required to provide personal air monitoring of its employees to ensure compliance with all regulatory requirements pertaining to worker protection. The CONSULTANT/OWNER will authorize DEMOLITION CONTRACTOR before removal of structure(s).

1. Air monitoring will be performed within the containment and also as perimeter monitoring outside the containment.

2. If continuous sampling indicates airborne fiber concentrations above 0.01 fibers/cc or

background level, work will be stopped unless otherwise approved by CONSULTANT/OWNER. Work may resume when the source of contamination has been corrected and the contamination has been cleaned to the satisfaction of the CONSULTANT/OWNER.

3. Glovebag, entire structures, and full enclosure clearance sampling will be by the aggressive PCM method when feasible. Enclosures must be fully dry before sampling.

C. Inspection: If during the project the CONSULTANT/OWNER determines that work practices either violate applicable rules and regulations or endanger employees, the DEMOLITION CONTRACTOR's on-site representative shall stop operations immediately and take corrective action.

### **3.6 REMOVAL OF NON-FRIABLE ASBESTOS-CONTAINING MATERIALS**

A. Removal of Non-Friable Materials, General: For each type of non-friable ACM indicated, comply with the following requirements:

1. Engineering controls and work practices for Class II asbestos work involving the removal of nonfriable ACM shall conform with OSHA 29 CFR 1926.1101(g)(7) and (8) and all other applicable requirements for Class II asbestos work.
2. Critical barriers, other barrier or isolation methods, impermeable drop cloths, and intact removal are required in each work area. Remove and dispose of all Class II ACM without damaging or otherwise rendering the ACM friable.
3. No visible emissions are permitted. If the material does not remain substantially intact, comply with the requirements for friable asbestos removal specified herein (except roofing removal).
4. The use of a negatively-pressurized containment is not required for the removal of nonfriable ACMs (Class II Asbestos Work) provided the ACMs are not rendered friable during removal.
5. Do not conduct asbestos removal unless the CONSULTANT/OWNER is present at the site or has provided approval to proceed in their absence.
6. Labeling Containerized Waste: Comply with the requirements specified herein.

#### **B. Removal of Resilient Flooring Materials**

1. Prior to removal, clean floors of dirt and debris with vacuums equipped with HEPA filter, disposable dust bag, and floor tool (no brush). Control odors and fumes with engineering controls.

2. Sanding the floor or related backing is not permitted.

3. Mechanical chipping of vinyl floor tile is prohibited, except when performed in a negative pressure enclosure.

4. Thoroughly wet vinyl floor with amended water. Use a slip scraper or equivalent to loosen the floor tile from the floor. Remove the floor tile in a substantially intact state. Removal of floor tile in a not substantially intact state must be completed within a negative pressure enclosure. Keep the floor tile wet throughout the removal and cleanup. Removal of floor tile using an infrared heat machine eliminates the wetting requirement.

5. Remove vinyl sheet flooring by cutting while wetting the snip-point. Wet sheet flooring during delamination. Rip-up of resilient flooring material is not permitted.

6. Clean resilient flooring of all debris using a HEPA vacuum, wet sweeping, mopping or equivalent and allow time to dry. Dry sweeping is prohibited.

7. Place the resilient flooring material and debris in an asbestos disposal bag. Seal the bag and place it in a properly labeled container. Comply with the disposal and labeling requirements as specified herein.

C. Other Non-Friable ACM: Remove non-friable ACM using the following technique:

1. Cutting, abrading, or breaking material is not permitted.
2. Wet material with amended water prior to and during removal.
3. Carefully disassemble material in such a manner as to prevent breakage. ACM must stay in intact state unless DEMOLITION CONTRACTOR demonstrates that intact removal is not possible.
4. Wrap and seal material in two layers of 6-mil thick polyethylene, asbestos disposal bags, or equivalent packages and properly label them with appropriate asbestos warning signs as indicated herein.
5. Immediately lower to the ground unwrapped or unbagged materials via covered dust-tight chute, crane, or hoist; or place in an impervious waste bag or wrap in plastic sheet and lower to the ground no later than the end of the work shift.
6. ACM must be kept wetted if not immediately bagged or wrapped and must be transferred to a closed receptacle by the end of the work shift.
7. Clean the floor of all debris using a HEPA vacuum, wet sweeping, mopping or equivalent and allow time to dry.
8. Dispose of asbestos waste in accordance requirements of this Section.

D. Abatement of Non-Friable Roofing Material: In addition to other requirements regarding removal of non-friable ACM, the following requirements apply to non-friable roofing material: compare with 29 CFR 1926.1101(g)(8)

1. Contractor shall remove all existing ACM roof materials without causing visible emissions or rendering asbestos materials friable. Acceptable manual methods which maintain materials as non-friable include, but are not limited to, the use of spud, spade, flat-blade or slicing tools, such as axes, mattocks, pry bars, crow bars, shovels, flat-blade knives, and utility knives, to slice, cut, strip-off, shear-under, or pry up the material. Work activities must include the use of water misting to prevent dust.

2. Contractor shall remove roofing in a non-friable manner to the extent feasible. Do not sand, mechanical cut, abrade, or grind ACM.

3. If Contractor utilizes single edge/blade cutting machines, they should be continuously water misted during use.

4. Powered roof cutters are considered to render the roofing material into a friable state and should not be on the roof at any time. Powered cutters with integral HEPA vacuums may be utilized, as long as roofing material is wetted and no visible emissions occur.

END OF SECTION

## Section B-4

### LEAD AND OTHER HAZARDOUS MATERIAL ABATEMENT AND DISPOSAL

#### PART 1 GENERAL

##### 1.1 Introduction

This section includes the abatement, removal, and disposal of hazardous materials other than asbestos, including but not limited to lead containing, radioactive, mercury containing, and Polychlorinated biphenyl (PCB) containing.

##### 1.2 Lead References

- A. Lead Exposure in Construction Standard, Part 603 of the Michigan Administrative Code (Amended March 29, 2021).
- B. Occupational Safety and Health Administration (OSHA) Lead Standard for the Construction Industry, Title 29 Code of Federal Regulation (CFR) 1926.62.
- C. All other applicable federal, state and local codes, rules and regulations

##### 1.3 Other References

- A. Cadmium in Construction Standard, Part 609 of the Michigan Administrative Code (Amended March 3, 2021).
- B. Chromium (VI) in Construction Standard, Part 604 of the Michigan Administrative Code (Amended March 29, 2021).

#### PART 2 PRODUCTS

- A. DEMOLITION CONTRACTOR shall furnish, provide, and utilize all tools and equipment necessary to perform the project work.

#### PART 3 EXECUTION

##### 3.1 Execution

All work shall be completed in accordance with applicable Federal, State, and local codes and regulations. DEMOLITION CONTRACTOR shall provide all required licenses and proof of personnel training upon request from CONSULTANT/OWNER.

### 3.02 Lead Containing Materials

- A. Lead containing materials have been identified in the project area. During demolition or removal of building materials or surfaces, dermal contact and inhalation exposure risks may be present from lead containing paint or other material. During demolition or impact to the identified lead containing materials, employees may be required to wear appropriate PPE, including respiratory protection (i.e., respirators) and skin protection (i.e., appropriate gloves and clothing).
- B. DEMOLITION CONTRACTOR may need to comply with requirements Michigan Part 603 Lead Exposure in Construction, including the requirements to conduct an initial Exposure Assessment to determine if levels of airborne particulate lead exceed the action level of 30 micrograms per cubic meter.
- C. All employees involved in the demolition of painted surfaces and employees who may be exposed to airborne lead should be trained in the exposure hazards of airborne lead and the proper use and selection of appropriate PPE, including skin, eye, and respiratory PPE.
- D. DEMOLITION CONTRACTOR shall re-evaluate work requirements and perform additional exposure assessment as required due to changes in work practices or as identified.
- E. DEMOLITION CONTRACTOR shall provide proper hygiene facilities and housekeeping procedures in accordance with the Lead in Construction Standard.
- F. DEMOLITION CONTRACTOR is responsible to ensure proper, documented disposal of any lead containing waste.

### 3.3 Cadmium Containing Materials

- A. There are no cadmium containing materials identified in this project.

### 3.4 Other materials

The scope of work also includes removal and disposal of the following types of materials:

- A. PCB containing lamp ballasts, capacitors, or other equipment,
- B. Mercury containing lamps or other equipment,
- C. Mercury containing thermostats,
- B. Radioactive materials-containing devices,
- C. Fuels, oils, etc,
- D. Batteries found in emergency exit lamps; and,
- E. Refrigerants.

### 3.5 PCB Containing Materials

- A. This specification applies to potentially Polychlorinated Biphenyls (PCB) containing light ballasts, capacitors, and other items to be removed, transported and disposed of in an approved treatment, storage, and disposal facility approved to handle PCBs. The DEMOLITION CONTRACTOR shall provide all work herein.
1. DEMOLITION CONTRACTOR shall remove and properly dispose of fluorescent light bulbs from light fixtures in the building.
  2. DEMOLITION CONTRACTOR shall remove and properly dispose PCB light ballasts and capacitors from light fixtures throughout the building, leaving the light fixtures installed in place.
- B. The work includes the following:
1. Partial dismantling of light fixtures and separation of ballasts and capacitors to permit ballast/capacitor removal from fixture.
  2. Cleaning of any PCB contamination or fixture surfaces.
  3. Placement of all PCB or PCB contaminated items generated as a result of work activities in approved disposal containers.
  4. Marking and labeling of all PCB Articles and Items for disposal.
  5. Transportation of all PCB articles, items and containers to an approved off-site treatment, storage, and disposal facility. Treatment facility shall be approved for disposal of PCB waste prior to transportation of PCB waste.
  6. Provide properly filled out Uniform Hazardous Waste Manifest from the transporter and certificate of destruction from the treatment, storage, and disposal facility.
  7. DEMOLITION CONTRACTOR shall pay all necessary fees and permits related to the removal, handling, transportation and disposal of PCB articles and items.
  8. Ballast and capacitors clearly labelled "NON PCB" may be disposed of as electronic waste.
- C. Regulatory Requirements:
1. Applicable Regulations: The applicable sections, latest editions and addenda of the following government regulations, codes, industry standards and recommended practice form a part of these specifications. Nothing in these specifications is to be construed as permitting work not conforming to these requirements.
    - a. EPA -Environmental Protection Agency
    - b. DOT - Department of Transportation
    - c. NEC - National Electric Code
    - d. NEMA - National Electrical Manufacturers Association
    - e. All other applicable Federal, State, County Codes, Standards and Regulation.



D. Personal Protective Equipment:

1. DEMOLITION CONTRACTOR shall provide protective clothing, eye protection, and respiratory protection for employees as necessary.

E. Secure work and storage areas:

1. The work area shall not be left unattended after procedures have begun and until ballasts and capacitors have been sealed in approved containers. If immediate transportation to the disposal facility is not feasible, the work area or stored PCB materials must be secured in an approved manner.

3.6 Mercury Containing Materials

A. Fluorescent bulbs (tube and compact styles) contain mercury. Intact mercury containing light bulbs meet the definition of Universal Waste. This specification applies to mercury containing light bulbs and devices to be removed, transported, and disposed of in an approved manner and in concordance with pertinent regulations.

1. DEMOLITION CONTRACTOR shall remove and properly dispose of fluorescent light bulbs from fixtures in the building.
2. DEMOLITION CONTRACTOR shall remove and properly dispose of mercury containing devices in the building.

B. The work includes the following:

1. Partial dismantling of light fixtures and separation of bulbs.
2. Placement of all fluorescent bulbs in approved containers.
3. Packaging all fluorescent bulbs in an intact state excepting use of an approved crushing device.
4. Marking and labeling of all mercury containing bulbs and devices for disposal.
5. Transportation of all packaged mercury containing bulbs and devices to an approved off-site treatment, storage, disposal, or recycling facility.
6. Provide properly completed Waste Manifest forms from the transporter and disposal/recycling facility.
7. DEMOLITION CONTRACTOR shall pay all necessary fees and permits related to the removal, handling, transportation, and disposal/recycling of mercury containing bulbs and devices.

C. Personal Protective Equipment:

1. DEMOLITION CONTRACTOR shall provide protective clothing, eye protection, and respiratory protection for employees as necessary.

D. Secure work and storage areas:

1. The work area shall not be left unattended after procedures have begun and until mercury containing bulbs and devices have been placed in approved containers.

### 3.7 Radioactive Materials

- A. This specification applies to radioactive materials-containing devices, including smoke detectors, fire alarms, and illuminated exit signs. All radioactive materials-containing devices remaining in the project area shall be removed, transported, and disposed of in an approved manner in accordance with applicable regulations.
  - 1. DEMOLITION CONTRACTOR shall remove and properly dispose of radioactive materials-containing devices for treatment, storage, disposal, or recycling in facilities approved to handle radioactive materials-containing devices.
  
- B. The work includes the following:
  - 1. Removal of radioactive materials-containing devices from mounted locations throughout the project area.
  - 2. Placement of all radioactive materials-containing devices generated as a result of work activities in approved disposal containers.
  - 3. Marking and labeling of all radioactive materials-containing devices for disposal.
  - 4. Transportation of all radioactive materials-containing devices and containers to an approved off-site treatment, storage, disposal, or recycling facility. Facilities shall be approved for treatment, storage, disposal, or recycling of radioactive materials-containing devices prior to transportation of radioactive materials-containing waste.
  - 5. Provide properly completed Waste Manifests from transporter and treatment, storage, disposal, or recycling facility.
  - 6. DEMOLITION CONTRACTOR shall pay all necessary fees and permits related to the removal, handling, transportation, and disposal of radioactive materials-containing devices.
  
- C. Personal Protective Equipment
  - 1. DEMOLITION CONTRACTOR shall provide protective clothing, eye protection, and respiratory protection for employees as necessary.
  
- D. Secure work and storage areas
  - 1. The work area shall not be left unattended after work activities have begun and until radioactive materials-containing devices have been sealed in approved containers. If immediate transportation to the disposal facility is not feasible, the work area or stored radioactive materials-containing devices must be secured in an approved manner.

### 3.8 Batteries

The DEMOLITION CONTRACTOR is responsible for appropriate disposal of identified batteries in accordance with applicable state and federal regulations as well as policies and procedures held by the OWNER.

### 3.9 Refrigerant

The DEMOLITION CONTRACTOR is responsible for disposal of identified refrigerant in accordance with applicable state and federal regulations.

### 3.10 Best management practices

- A. In the case of hazardous materials that do not trigger regulatory controls or are not subject to specific regulatory requirements, including PCBs and metals (excluding lead and cadmium) found in painted surfaces, the DEMOLITION CONTRACTOR shall follow best practice standards and controls to reduce or eliminate worker exposure and potential environmental impact.
  
- B. Generally, the type of work associated with these materials where controls should be in place includes cutting, torching, grinding, or otherwise physically disturbing the materials that contain contaminants

END OF SECTION

## SECTION B-5

### CUTTING AND PATCHING

#### PART 1. GENERAL

##### 1.1 SUMMARY

- A. This Section specifies administrative and procedural requirements for cutting and patching work completed by the DEMOLITION CONTRACTOR.

#### PART 2 PRODUCTS

##### 2.1 CUTTING AND PATCHING PROPOSAL

- A. Where approval of procedures for cutting and patching is required before proceeding, the DEMOLITION CONTRACTOR shall submit a proposal describing procedures to be performed and request approval to proceed. Include the following information, as applicable, in the proposal:
  1. Describe the extent of cutting and patching required and how it is to be performed.
  2. Describe anticipated results in terms of changes to existing construction; include changes to structural elements and operating components as well as changes in the building's appearance and other significant visual elements.
  3. List utilities that will be disturbed or affected, including those that will be relocated and those that will be temporarily out of service. Indicate how long service will be disrupted.
  4. Where cutting and patching involves addition of reinforcement to structural elements, submit details and engineering calculations to show how reinforcement is integrated with the original structure.
  5. Approval to proceed with cutting and patching does not waive the OWNER'S right to later require complete removal and replacement of a part of the Work found to be unsatisfactory.

##### 2.2 MATERIALS

- A. The DEMOLITION CONTRACTOR shall use materials that are identical to existing materials. If identical materials are not available or cannot be used where exposed surfaces are involved, use materials that match existing adjacent surfaces to the fullest extent possible with regard to visual effect. Use materials whose installed performance will equal or surpass that of existing materials.

## PART 3 EXECUTION

### 3.1 REQUIREMENTS

- A. Requirements for Structural Work. The DEMOLITION CONTRACTOR shall not cut and patch structural elements in a manner that would reduce their load-carrying capacity or load-deflection ratio.
- B. Operational and Safety Limitation. The DEMOLITION CONTRACTOR shall not cut and patch  
  
operating elements or safety related components in a manner that would result in reducing their capacity to perform as intended, or result in increased maintenance, or decreased operational life or safety.
- C. Visual Requirements. The DEMOLITION CONTRACTOR shall not cut or patch construction exposed on the exterior or in occupied spaces, in a manner that would, in the OWNER's opinion, reduce the buildings aesthetic qualities, or result in visual evidence of cutting or patching. Remove and replace Work cut and patched in a visually unsatisfactory manner.

### 3.2 INSPECTION

- A. Before cutting existing surfaces, the DEMOLITION CONTRACTOR shall examine surfaces to be cut and patched and conditions under which cutting and patching is to be performed. Take corrective action before proceeding if unsafe or unsatisfactory conditions are encountered.

### 3.3 PREPARATION

- A. Temporary Support. The DEMOLITION CONTRACTOR shall provide temporary support of Work to be cut.
- B. Protection. The DEMOLITION CONTRACTOR shall protect existing construction during cutting and patching to prevent damage. Provide protection from adverse weather conditions for portions of the Project that might be exposed during cutting and patching operations.
- C. Avoid interference with use of adjoining areas or interruption of free passage to adjoining areas.

### 3.4 CUTTING

- A. The DEMOLITION CONTRACTOR shall cut existing construction using methods least likely to damage elements to be retained or adjoining construction.

- B. In general, where cutting is required use hand or small power tools designed for sawing or grinding, not hammering and chopping. Cut holes and slots neatly to size required with minimum disturbance of adjacent surfaces.
- C. To avoid marring existing finished surfaces, cut or drill from the exposed or finished side into concealed surfaces.

### 3.5 PATCHING

- A. The DEMOLITION CONTRACTOR shall patch with durable seams that are as invisible as possible. Comply with specified tolerances.
- B. Restore exposed finishes of patched areas and extend finish restoration into retained adjoining construction in a manner that will eliminate evidence of patching and finishing.
- C. Where removal of walls or partitions extends one finished area into another, patch and repair floor and wall surfaces in the new space to provide an even surface of uniform color and appearance. Remove existing floor and wall coverings and replace with new materials, if necessary to achieve uniform color and appearance.
- D. Where patching occurs on a smooth painted surface, extend final paint coat over entire unbroken area containing the patch, after the patched area has received primer and second coat.
- E. Patch, repair or rehang existing ceilings as necessary to provide an even plane surface of uniform appearance.

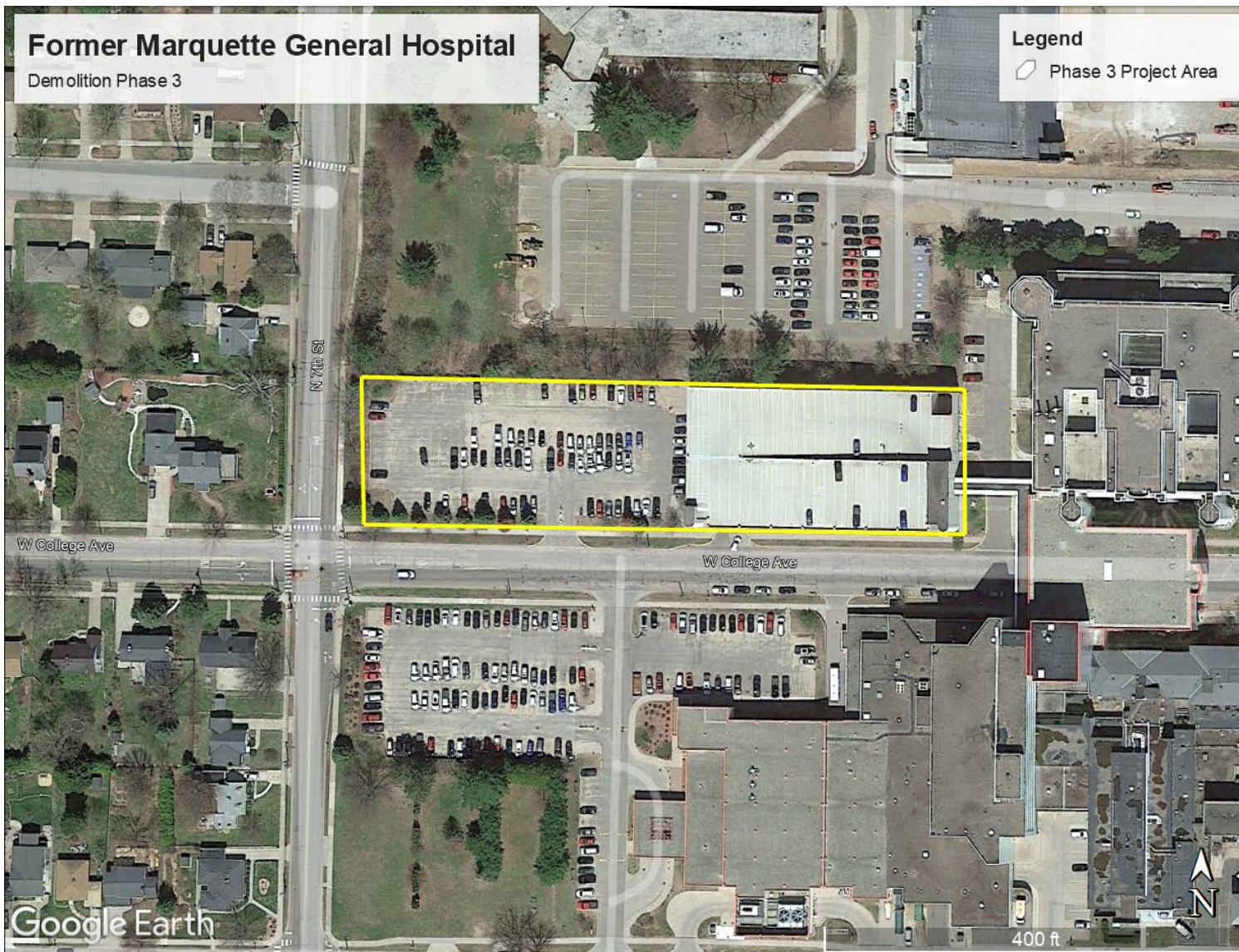
### 3.6 CLEANING

The DEMOLITION CONTRACTOR shall thoroughly clean areas and spaces where cutting and patching is performed or used as access. Remove completely paint, mortar, oils, putty and items of similar nature. Thoroughly clean piping, conduit and similar features before painting or other finishing is applied. Restore damaged pipe covering to its original condition.

END OF SECTION

# EXHIBIT A

## Demolition Phase 3 Map



## **EXHIBIT B**

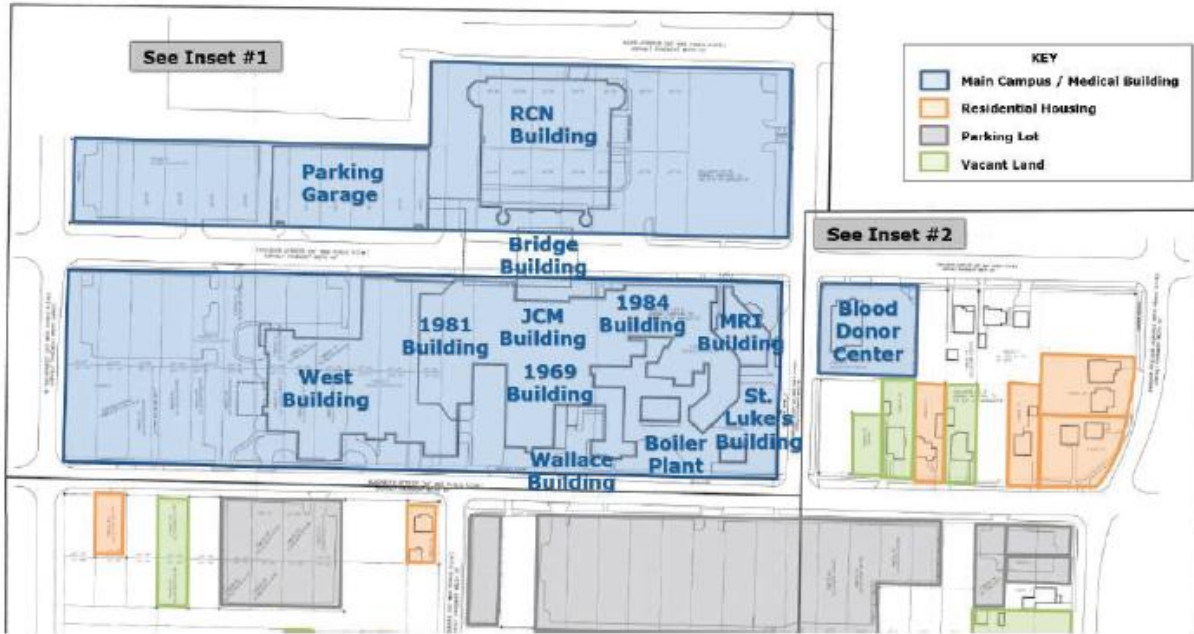
### Demolition and Abatement Specifications

#### **TECHNICAL SPECIFICATIONS**

- SECTION B-1 STRUCTURE DEMOLITION
- SECTION B-2 EROSION AND SURFACE WATER CONTROL
- SECTION B-3 ASBESTOS ABATEMENT AND DISPOSAL
- SECTION B-4 LEAD AND OTHER HAZARDOUS MATERIAL  
ABATEMENT AND DISPOSAL
- SECTION B-5 CUTTING AND PATCHING



EXHIBIT C  
Campus Map



**EXHIBIT D**  
Detailed Bid

**NORTHERN MICHIGAN UNIVERSITY FOUNDATION  
PHASE III DEMOLITION AT FORMER MARQUETTE GENERAL HOSPITAL CAMPUS  
INVITATION TO BID – PHASE III DEMOLITION SERVICES  
BID FORM**

\_\_\_\_\_ *[Contractor Name]*\_\_\_\_\_ (hereafter referred to as “DEMOLITION CONTRACTOR”) proposes to provide contracting services to Northern Michigan University Foundation (hereafter referred to as “OWNER”) for the demolition project as follows:

1. Total materials and labor, including, without limitation, subcontracting, and vendor services:

\_\_\_\_\_ \$ \_\_\_\_\_  
(amount in words) (amount in figures)

2. The undersigned further agrees to substantially complete the project by or within \_\_\_\_\_ calendar days after award of contract.

3. Subcontractors:

The undersigned will submit for approval a list of proposed subcontractors. The undersigned agrees in every way to be responsible for the work, material, equipment and supplies furnished by each subcontractor.

List any and all subcontractors and respective bid costs to be used on this project:

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[SIGNATURE ON THE FOLLOWING PAGE]

**ACKNOWLEDGMENTS**

The undersigned acknowledges that: The Bidder has received the Bid Form, the Bid Request, and Specifications, and further acknowledges that the Bidder has received the following addenda issued thereto and has incorporated their provision in the bid:

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

The bid documents have been read and carefully examined that the Bidder fully understands and has correlated their observations with the requirements of the bidding documents.

The Bidder has reviewed the draft Contract Agreement and is willing to execute the draft Contract Agreement as written; or if not willing to execute the agreement has written, has attached to their Bid requested changes to the Contract Agreement.

The Bidder has visited the site, has familiarized themselves with the local conditions under which the work is to be performed, and has correlated their observations with the requirements of the proposed contract documents.

Their bid is based upon the materials, systems, and equipment required by the bid documents and that exceptions are fully explained.

The Bid Form has not been altered in any way, except to provide requested information in the spaces provided.

<b>Item No.</b>	<b>Description</b>	<b>Total</b>
1	Mobilization and Administration	
2	Demolition and Disposal of Site Structures/Debris	
3	Demolition and Disposal of Site Asphalt	
4	Backfilling, Final Grading	
5	Topsoil, Seeding and Mulching	
6	Demobilization and Project Closeout	
	TOTAL	

I have read and I understand the responsibilities required of the Contractor in the Invitation to Bid and under the AIA Standard Form(s) of Agreement Between OWNER and DEMOLITION CONTRACTOR r, as amended, which are provided with the Bid, including, without limitation, the environmental reports. If selected, Contractor will be able to fulfill the requirements.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, [Name] \_\_\_\_\_, the [Title] \_\_\_\_\_ of [Demolition Contractor] \_\_\_\_\_, being duly sworn, deposes and says that the information provided herein is complete so as not to be misleading.

Contractor Name: \_\_\_\_\_

\_\_\_\_\_  
BY:

ITS:

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_ Cty., acting in \_\_\_\_\_ Cty., MI

My Commission Expires: \_\_\_\_\_

**BID CHECKLIST**

- |  |  |
|--|--|
| <input type="checkbox"/> Cost Proposal                 | <input type="checkbox"/> If selected as contractor, I agree to the contractual terms as provided in the RFP: |
| <input type="checkbox"/> Bid Proposal Form             | <input type="checkbox"/> AIA A101-2017, As Modified  |
| <input type="checkbox"/> Bid Security                  | <input type="checkbox"/> AIA A201-2017, As Modified  |
| <input type="checkbox"/> Familial Disclosure Statement | <input type="checkbox"/> Insurance Requirements  |
| <input type="checkbox"/> Request for Qualifications    |  |

**REGISTRATION:**

Demolition Contractor is currently registered as a licensed contractor in the State of \_\_\_\_\_.

License Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT E**  
 Familial Disclosure Statement

**Familial Disclosure Affidavit**

The undersigned, the OWNER or authorized officer of \_\_\_\_\_ (the "DEMOLITION CONTRACTOR"), pursuant to the familial disclosure requirement provided in the Northern Michigan University Foundation ("NMUF") Invitation to Bid for the **DEMOLITION RELATED TO THE FORMER MARQUETTE GENERAL HOSPITAL CAMPUS PROJECT**, hereby represents and warrants that, except as provided below, no familial relationships exist between the OWNER or any employee of the Contractor or any member of the Board of Trustees of NMUF.

List any Familial Relationships:

\_\_\_\_\_  
 \_\_\_\_\_

VENDOR:

\_\_\_\_\_  
 \_\_\_\_\_

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

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )SS.  
 COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by  
 \_\_\_\_\_, the \_\_\_\_\_ of  
 \_\_\_\_\_, on behalf of said entity.

\_\_\_\_\_  
 Notary Public  
 \_\_\_\_\_ Cty. Acting in  
 \_\_\_\_\_ Cty., \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_

**EXHIBIT F**  
Request for Qualifications

Request for Qualifications

**Contractor's**  
**STATEMENT OF QUALIFICATION**  
for

[ \_\_\_\_\_ ]

PLEASE COMPLETE ALL INFORMATION

A RESPONSE MUST BE GIVEN FOR ALL ITEMS IN THIS QUALIFICATION FORM IF AN ITEM DOES NOT APPLY, PLEASE STATE "N/A"

*The items and sections with asterisk(\*) marks are mandatory.*

Incomplete information may be deemed non-responsive and will be returned without evaluation.

\*BUSINESS NAME: \_\_\_\_\_

\*STREET ADDRESS: \_\_\_\_\_

\*CITY, STATE, ZIP: \_\_\_\_\_

\*TELEPHONE NUMBER: COMPANY \_\_\_\_\_

WEBSITE: \_\_\_\_\_

\*TAX I.D.: \_\_\_\_\_

\*DUNS NUMBER: \_\_\_\_\_

\*CONTACT PERSON NAME: \_\_\_\_\_

\*CONTACT PERSON POSITION/TITLE: \_\_\_\_\_

\*E-MAIL ADDRESS: \_\_\_\_\_

**1. BUSINESS CLASSIFICATION:**

Type of Business: (check only one)

A Small Business

S Labor Surplus Area - Large Business

B Large Business

H Non-Profit Organization

E Labor Surplus Area - Small Business

I Foreign-Based and/or Foreign-Owned

**Contractor's Statement of Qualification**

If you have any questions regarding your size classification (Large or Small Business), contact your local office of the Small Business Administration or check their website: <http://www.sba.gov/size/>.

Ownership: (at least 51%)

- F Women-Owned (WBE)
- J Handicapped/ ADA (DBE)
- C Minority/Disadvantaged (MBE)
  - African American
  - Puerto Rico
  - Native American (Includes Indians, Aleut & Native Hawaiian)
  - Hispanic American
  - Asian/Indian American (Includes India, Pakistan, Bangladesh)
  - Asian/Pacific American (Includes Asia, Pacific Islands, etc.)

Labor Union Affiliation (if any):

**2. \*BUSINESS ORGANIZATION**

(Check all that apply)

Corporation:

State of Incorporation:  Year:

Subsidiary of:

Headquarters Address:

City, State, Zip:

DUNS Number

Parent to:

List Subsidiaries & Divisions:

Partnership

General  Limited

State & County where filed:

Date of Organization:

Joint Venture

Date of Organization:

*Attach a copy of the Joint Venture Agreement and corporate minutes authorizing a joint venture. Individual members of Joint Ventures must be pre-qualified. Submit a separate application for each member.*

Years your organization has been in business as a Contractor:

Years your organization has been in business under its present name:

**Contractor's Statement of Qualification**

List other or former names under which your organization has operated:

List key officers who are authorized to and can make commitments on this project in your organization:

Name:

Title:

Name:

Title:

Name:

Title:

**3. LICENSING INFORMATION**

Company registration/license numbers, locations and the trade categories to which they apply.



**Contractor's Statement of Qualification**

**4. \*EXPERIENCE**

For the most recent five years, what percentage of your firm's revenues were generated by performing the following: (Please provide information for at least one of the prospect types).

	2017	2018	2019	2020	2021
■ Construction Manager	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %
■ General Contractor	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %
■ Design/ Builder	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %
■ Primary Subcontractor	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %
■ Other <input type="text"/>	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %	<input type="text"/> %

In the most recent 5 years, what percentage of your total workload was for the following:

■ Educational	<input type="text"/> %
■ Government	<input type="text"/> %
■ Healthcare	<input type="text"/> %
■ Industrial	<input type="text"/> %
■ Commercial	<input type="text"/> %
■ Residential	<input type="text"/> %
■ Other <input type="text"/>	<input type="text"/> %
Total:	<input type="text"/>

**5. \*PROJECT SPECIFIC QUALIFICATIONS**

Provide a list of all major construction projects, including similar and relevant projects, your firm has in progress or has completed in the past 5 years. Include the name of project, owner, owner's contact and telephone, contract amount, construction costs, percent complete, (scheduled) completion date and percentage of the cost of the work performed with your own forces.

Contractor's Statement of Qualification

6. REFERENCES

Trade References:

Company:	<input type="text"/>	Company:	<input type="text"/>
City, State	<input type="text"/>	City, State	<input type="text"/>
Phone:	<input type="text"/>	Phone:	<input type="text"/>

Bank References:

Company:	<input type="text"/>	Company:	<input type="text"/>
City, State	<input type="text"/>	City, State	<input type="text"/>
Phone:	<input type="text"/>	Phone:	<input type="text"/>

7. \*INSURANCE

Liability: Limits your firm is able to obtain:

General Liability: per occurrence:	<input type="text"/>	aggregate:	<input type="text"/>
Umbrella Liability: per occurrence:	<input type="text"/>	aggregate:	<input type="text"/>
Automobile Liability: per occurrence:	<input type="text"/>	aggregate:	<input type="text"/>

Insurance Company:	<input type="text"/>	Insurance Company Address
Insurance Contact:	<input type="text"/>	
Contact Phone:	<input type="text"/>	

8. FINANCIAL INFORMATION

Surety:		Bond Rating:	<input type="text"/>
Bonding Company:	<input type="text"/>	Bonding Company Address:	
Bonding Contact:	<input type="text"/>		
Contact Phone:	<input type="text"/>		

Your firm's single bond capacity:\$	<input type="text"/>	Aggregate bond capacity:\$	<input type="text"/>
State total worth of work currently in progress and under contract: \$	<input type="text"/>		

Contractor's Statement of Qualification

What size jobs would your firm prefer to bid? Minimum\$  Maximum\$

State annual amount of construction work performed during the most recent five years:

Year:	2017	2018	2019	2020	2021
Amount:	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Please attach a copy of the most recent audited financial statement of your firm.

## Contractor's Statement of Qualification

Claims and Suits. *(If the answer to any of the questions below is yes, please attach details.)*

- Has your organization ever defaulted on a contract?  Yes  No
- Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?  Yes  No
- Has your organization been a party to any lawsuits or claims with regard to construction contracts within the last five years?  Yes  No

### 8. SAFETY PROGRAM

Name of Company's Safety Director/Representative (attach résumé):

Representative's Phone Number:

Does Your Company have a Formal Written Safety Program?

Yes  No\*

*\*If no, please explain how safety is taught, promoted and enforced by your company*

Safety information  
(if no written Program)

Does your Safety Program include: *(attach explanations for each item checked "No")*

A Safety, Health, and Accident Prevention Program?

Yes  No

A program to ensure safety & health issues are pre-planned into each project and work operation?

Yes  No

A Hazard Communication Program?

Yes  No

An Accident/Incident Investigation Procedure?

Yes  No

A Safety & Health Training Program?

Yes  No

New Employee/Project Orientation?

Yes  No

Weekly Toolbox Meetings?

Yes  No

Daily Job Briefings?

Yes  No

Supervisor Safety Training?

Yes  No

Task Specific Training?

Yes  No

OSHA Required Training?

Yes  No

Training Repeated at Regular Intervals for all Workers?

Yes  No

Does your company ensure that any subcontractors you use will have safety, health, and accident prevention program equivalent to yours?

Yes  No

**Contractor's Statement of Qualification**

**SAFETY INFORMATION MATRIX**

Complete the Safety Information Matrix on this page for the most recent three (3) full years using the Loss Run reports from your insurance carrier and your OSHA 200's and/or OSHA 300's:

<b>Year:</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Interstate EMR:	<input type="text"/>	<input type="text"/>	<input type="text"/>
State EMR:	<input type="text"/>	<input type="text"/>	<input type="text"/>
Recordable Incidents: <sup>(1)</sup>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Recordable Incident Rate: <sup>(1)</sup>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Days Away Restricted Transfer: <sup>(1)</sup>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Lost & Restricted Workday Injuries: <sup>(9)</sup>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Lost Work Day Injuries: <sup>(1)</sup>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Lost Work Days: <sup>(1)</sup>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Lost-Time Incident Rate: <sup>(1)</sup>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Fatalities:	<input type="text"/>	<input type="text"/>	<input type="text"/>
Hours Worked:	<input type="text"/>	<input type="text"/>	<input type="text"/>

9. Report figures as they appear on OSHA forms

10. Recordable Incident Rate =  $\frac{\# \text{ Total Recordable Injuries}}{\text{Total Hours Worked}} \times 200,000$

Total Hours Worked

11. Lost-Time Incident Rate =  $\frac{\# \text{ of Lost Time Incidents}}{\text{Total Hours Worked}} \times 200,000$

An explanation with corrective action plans must be enclosed for all current EMR's over 1.0 along with copies of your Loss Run reports/OSHA 200's for the past three years.

Insurance Premium Eligible for Experience Modification Rating:  Yes  No

Self Insured:  Yes  No Government Insured:  Yes  No

Submit copy of EMR Information on Your Insurance Carrier's Letterhead.

**10. AFFIRMATIVE ACTION**

Does your firm have an Affirmative Action Program?  Yes\*  No

\*If yes, Provide a Copy of Your Firm's Affirmative Action Program/Statement.

11. Does Your Firm have a Quality Assurance Program?  Yes  No

Contractor's Statement of Qualification

12. SIGNATURE

Dated this [ ] day of [ ] 2022

Name of Organization: [ ]

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

Title: [ ]

\_\_\_\_\_, being duly sworn, deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

*Please attach any additional information you feel is relevant to your qualifications to perform this project.*

ATTACHMENT CHECKLIST (Check N/A if item is not applicable or not available)

- |   |  |
|---|--|
| ____ Diversity Certification (Sect. 1)            | ____ EMR Letter (Sect. 10)                   |
| ____ N/A  | ____ Affirmative Action Statement (Sect. 11) |
| ____ Joint Venture Agreement (Sect. 2)            | ____ Quality Policy Statement (Sect. 12)     |
| ____ N/A  |  |
| ____ Project Lists (Sect. 8)                      |  |
| ____ Claims and Suits (Sect. 9)                   |  |
| ____ N/A  |  |
| ____ Firm's Audited Financial Statement (Sect. 9) |  |

**EXHIBIT G**  
Professional Liability Insurance

**NORTHERN MICHIGAN UNIVERSITY FOUNDATION  
PHASE III DEMOLITION AT FORMER MARQUETTE GENERAL HOSPITAL CAMPUS  
INVITATION TO BID – PHASE III DEMOLITION SERVICES  
INSURANCE REQUIREMENTS**

The limits of liability for the insurance required by the OWNER are as follows:

**A. By Contractor:**

1. Workers' Compensation:	
2. Employer's Liability –	
Bodily Injury by Accident:	\$5,000,000
Bodily Injury by Disease, Policy Limit:	\$5,000,000
Bodily Injury by Disease, Each Employee:	\$5,000,000
3. General Liability –	
Each Occurrence (Bodily Injury and Property Damage):	\$5,000,000
Personal & Advertising Injury	\$5,000,000
Medical Payments Coverage	\$1,000,000
Fire Damage Liability	\$5,000,000
General Aggregate:	\$10,000,000
Products & Completed Operations Aggregate	\$10,000,000
4. Excess Umbrella Liability –	
Each Occurrence:	\$20,000,000
General Aggregate:	\$20,000,000
5. Automobile Liability –	
a. Bodily Injury:	
Each Person	\$1,000,000
Each Accident	\$1,000,000
Property Damage	
Each Accident	\$1,000,000
or	
a. Combined Single Limit	
(Bodily Injury and Property Damage):	
Each Accident	\$2,000,000
6. Professional Liability Insurance	
Each Wrongful Act	\$2,000,000
Policy Aggregate	\$2,000,000
7. Other (specify):	
Pollution Liability – Each Pollution Event	\$1,000,000
Policy Aggregate	\$2,000,000

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

#### General Liability

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

#### Umbrella / Excess Liability

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

#### Automobile Liability:

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

#### Professional and Pollution Liability:

- DEMOLITION CONTRACTOR may combine these insurance requirements into one shared limit of liability of no less than \$2,000,000
- DEMOLITION CONTRACTOR shall notify OWNER of any material impairment of limits available under the policies

#### Additional Requirements:

- DEMOLITION CONTRACTOR shall require all contractors, subcontractors and/or their agents to maintain the insurance requirements set forth between OWNER and Contractor.

DEMOLITION CONTRACTOR shall require all contractors, subcontractors and/or their agents to name OWNER and its respective directors, officers, and employees as additional insureds as set forth in insurance requirements between OWNER and Contractor.



# EXHIBIT H

## AIA Standard Agreement

Note: "Architect," as used in this document, will mean the OWNER or the OWNER's Designated

### DRAFT AIA Document A101 - 2017

Exhibit H

#### Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

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

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

«The Northern Michigan University Foundation »  
«Administrative Bldg »  
«1401 Presque Isle »  
«Marquette, MI 49855 »

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

«  »  
«  »  
«  »  
«  »

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

«Demolition of the Former Marquette General Hospital Campus»  
«420 W. Magnetic Avenue »  
«Marquette, MI 49855 »

**The Architect:**  
(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.

The parties should complete AIA Document A101-2017-Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A101-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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## TABLE OF ARTICLES

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

## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

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

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. This project is being funded in part by an appropriation from the State of Michigan administered by the State Land Bank Authority (SLBA Grant) and Federal Community Development Block Grant (CDBG Grant) administered by the Michigan Economic Development Corporation (MEDC). Contractor shall comply with all Applicable Laws, as required by the General Conditions, including those imposed by local, state, and federal funding requirements.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:  
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work)

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

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

#### § 3.3 Substantial Completion

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See Note:

11031800010

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:  
(Check one of the following boxes and complete the necessary information.)

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

By the following date:

§ 3.3.2 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	Substantial Completion Date
<input type="text"/>	<input type="text"/>

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be  (\$  ), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

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

Item	Price
<input type="text"/>	<input type="text"/>

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

Item	Price	Conditions for Acceptance
<input type="text"/>	<input type="text"/>	<input type="text"/>

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

Item	Price
<input type="text"/>	<input type="text"/>

§ 4.4 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

if Contractor does not achieve Substantial Completion by the date required to meet the Contract Time, Owner shall be entitled to retain from Contractor, as liquidated damages and not as a penalty, Two Thousand Dollars (\$2,000) for each day beginning on the first day following the expiration of the date required for Substantial Completion under the Contract Time and continuing until the actual date of Substantial Completion is achieved. Contractor agrees such liquidated damages are a reasonable pre-estimate of the damages Owner will incur because of the delayed completion

of the Work. Owner may deduct liquidated damages from any unpaid amounts then and thereafter due the Contractor under this Agreement. »

§ 4.6 Other:

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

» »

**ARTICLE 5 PAYMENTS**

§ 5.1 Progress Payments

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

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

» »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the      day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the      day of the      month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than      (    ) days after the Architect receives the Application for Payment.

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

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

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.7 Retainage**

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

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

§ 5

§ 5.1.7.1.1 The following items are not subject to retainage:

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

§ 5

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

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

§ 5

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

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

§ 5

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

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

**§ 5.2 Final Payment**

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

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- 2 a final Certificate for Payment has been issued by the Architect.

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

§ 5

**§ 5.3 Interest**

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

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

§ 5 % § 5

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.  
*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

K  
K  
K  
K  
K

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:  
*(Check the appropriate box.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201-2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

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

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:  
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

K

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:  
*(Name, address, email address, and other information)*

K  
K  
K  
K  
K  
K  
K

§ 8.3 The Contractor's representative:  
(Name, address, email address, and other information)

x x  
x x  
x x  
x x  
x x  
x x

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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

x x

§ 8.7 Other provisions:

x x

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- 1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- 2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- 3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- 4 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.)

§ 9.2

- 5 Drawings

Number	Title	Date

- 6 Specifications

Section	Title	Date	Pages

- 7 Addenda, if any:

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

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

**8 Other Exhibits:**

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

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

**8.2** The Sustainability Plan;

Title	Date	Pages
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**8.3** Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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**9 Other documents, if any, listed below:**

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

**9.1** State Land Bank Authority Grant Agreement with The Northern Michigan University Foundation)  
**9.2** MEDC Contract Special Conditions (Form 4-L), except that Davis-Bacon wages shall not apply.

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

**THE NORTHERN MICHIGAN UNIVERSITY  
FOUNDATION**

OWNER (Signature)

\_\_\_\_\_  
M D H

*(Printed name and title)*

CONTRACTOR (Signature)

\_\_\_\_\_  
M D H

*(Printed name and title)*



# DRAFT AIA® Document A101® – 2017

## Exhibit A

### Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 6 day of 8 in the year 20  
*(In words, indicate day, month and year.)*

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

Demolition of the former Marquette General Hospital Campus  
430 W. Magnatic Avenue  
Marquette, MI 49855  
 

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

The Northern Michigan University Foundation  
Administration Bldg.  
1401 Presque Isle  
Marquette, MI 49855  
 

**THE CONTRACTOR:**  
*(Name, legal status and address)*

#### TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

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

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

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

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**§ A.2.2 Liability Insurance**

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

**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall 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 and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, 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.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

Causes of Loss	Sub-Limit

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage	Sub-Limit

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 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 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions except for any claim or loss arising from the acts or omissions of Contractor or those for whom Contractor is responsible.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure

against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ A.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

**§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

**§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

**§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

**§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

**§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

**§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

**§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

§ A.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

§ A.2.5.2 **Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage	Limits
----------	--------

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show all those identified as additional insureds per A.3.1.3, the Owner as an additional insured on the Contractor's Commercial General Liability, Automobile Liability, Pollution Liability, and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage, Automobile Liability coverage, Pollution Liability Coverage, and Umbrella Excess Liability, to include (1) the Owner, its officers, directors, and employees, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (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 and the Architect's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance 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 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Five Million Dollars  (\$ 5,000,000 ) each occurrence, Five Million Dollars  (\$ 5,000,000 )

general aggregate, and ~~«Ten Million Dollars » (\$ «10,000,000 » )~~ 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 injury 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 3.18 of the General Conditions.

§ A.3.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than ~~«One Million Dollars » (\$ «1,000,000 » )~~ per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles in the amount of One Million Dollars (\$1,000,000) or a Combined Single Limit of Bodily Injury and Property Damage of Two Million Dollars (\$2,000,000) along with any other statutorily required automobile coverage.

§ A.3.2.4 ~~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 the coverage required under Section A.3.2.2 and A.3.2.3, 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.~~

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than ~~«Five Million Dollars » (\$ «5,000,000 » )~~ each accident, ~~«Five Million Dollars » (\$ «5,000,000 » )~~ each employee, and ~~«Two Million Dollars » (\$ «2,000,000 » )~~ policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 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 ~~«Two Million Dollars » (\$ «2,000,000 » )~~ per claim and ~~«Two Million Dollars » (\$ «2,000,000 » )~~ in the aggregate.

§ **A.3.2.9** 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 «Three Million Dollars» (\$ «3,000,000» ) per claim and «Three Million Dollars» (\$ «3,000,000» ) in the aggregate.

§ **A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than «Five Million Dollars» (\$ «5,000,000» ) per claim and «Five Million Dollars» (\$ «5,000,000» ) in the aggregate.

§ **A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than «» (\$ «» ) per claim and «» (\$ «» ) in the aggregate.

§ **A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than «» (\$ «» ) per claim and «» (\$ «» ) in the aggregate.

§ **A.3.3 Contractor's Other Insurance Coverage**

§ **A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased 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 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

«Six years from the date of Final Completion of the Work.»

§ **A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

- § **A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.5 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:  
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

«»

- § **A.3.3.2.2** Railroad Protective Liability Insurance, with policy limits of not less than «» (\$ «» ) per claim and «» (\$ «» ) in the aggregate, for Work within fifty (50) feet of railroad property.

- § **A.3.3.2.3** Asbestos Abatement Liability Insurance, with policy limits of not less than «Five Million Dollars» (\$ «5,000,000» ) per claim and «Five Million Dollars» (\$ «5,000,000» ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- [ < > ] § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.
- [ < > ] § A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.
- [ < > ] § A.3.3.2.6 Other Insurance  
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

Coverage	Limits
Excess Umbrella Liability	Each Occurrence: Twenty Million Dollars (\$20,000,000) General Aggregate: Twenty Million Dollars (\$20,000,000)

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:  
*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	In the amount of the Contract Sum
Performance Bond	In the amount of the Contract Sum

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

0.0

# DRAFT AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

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

«Former Marquette General Hospital Campus»  
«420 W. Magneto Avenue»  
Marquette, MI 49855 »

THE OWNER:  
(Name, legal status and address)

«The Northern Michigan University Foundation » « »  
«1401 Progress Isle»  
Marquette, MI 49855 »

THE ARCHITECT:  
(Name, legal status and address)

« » « »  
« »

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A303™, Guide for Supplementary Conditions.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. Notwithstanding the foregoing, the Contract Documents include the Grant Agreement between the Owner and the State Land Bank Authority (SLBA) and the grant requirements of the Michigan Economic Development Corporation (MEDC) who is administering Community Development Block Grant funds, the terms and requirements of which are incorporated by reference. Contractor shall assume toward Owner all the obligations and responsibilities which Owner assumes toward the SLBA, the MEDC and the City of Marquette under such funding agreements.

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.3. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.



§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Contract Documents are intended to supplement and complement each other and shall be so interpreted. If, however, any provision of the Contract Documents incompatibly conflicts with another provision of the Contract Documents, the provision imposing the better quality, greater duty, or more stringent requirement on Contractor shall govern.

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

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

**§ 1.7 Digital Data Use and Transmission**

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

**§ 1.8 Building Information Models Use and Reliance**

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

**ARTICLE 2 OWNER**

**§ 2.1 General**

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

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

**§ 2.2 Evidence of the Owner's Financial Arrangements**

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

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

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

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

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**§ 2.3 Information and Services Required of the Owner**

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

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of a survey information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Notwithstanding the foregoing, Owner makes no warranty of the adequacy, accuracy, and completeness of such survey and Contractor shall not rely upon information in the survey that Contractor knows or with the exercise of reasonable care should know, is not accurate, adequate, or complete. Further, Owner makes no warranty or representation about the completeness of any environmental studies or reports for Contractor's purposes, including any Contractor interpretation or conclusion drawn from such reports, or the means, methods, or techniques to be employed by Contractor in performing the work and the safety precautions incident thereto.

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

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

**§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

**§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~72-hour ten-day~~ period after receipt of notice from the Owner to correct ~~expenses and~~ ~~costs~~ correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

**ARTICLE 3 CONTRACTOR**

**§ 3.1 General**

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express

authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents. Contractor accepts the relationship of trust and confidence established by this Agreement and shall cooperate with the Owner, Architect, and Engineer and exercise Contractor's skill and judgment in furthering the interest of the Owner and performing the Work in an expeditious and economical manner so as to promote the best interest of the Owner.

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

**§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

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

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

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

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

**§ 3.2.5** Contractor enters into this Agreement on the basis of its own examination, investigation, and evaluation of the Project site and Contract Documents and not in reliance upon any opinion or representation of Owner, Architect, Engineer, or any of their respective members, officers, employees, agents, consultants or independent contractors. Contractor agrees the Contract Documents are sufficiently complete to have enabled Contractor to determine the Contract Sum and to fulfill Contractor's obligation to complete the Work on or before the Substantial Completion date. Contractor represents that it has evaluated to its satisfaction and will instruct its subcontractors and suppliers to evaluate to their satisfaction, the conditions and limitations under which the Work is to be performed including the nature of the project site and surrounding areas, including environmental conditions, utilities, access, climatic conditions, and anticipated labor supply. Contractor represents that it has thoroughly reviewed the Contract requirements and is not aware of any discrepancies, omissions, ambiguities or conflicts. Contractor further acknowledges that an extra degree of care on this Site is required under the circumstances, including protection against damage to adjacent properties and utilities and any ongoing use of the site by others.

### **§ 3.3 Supervision and Construction Procedures**

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

### **§ 3.4 Labor and Materials**

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

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

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

### **§ 3.5 Warranty**

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

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

### **§ 3.6 Taxes**

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

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

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

execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Applicable laws include all local, state, federal, governmental and quasi-governmental rules, regulations, standards, ordinances, codes, laws, Executive Orders, including but not limited to, those imposed by the S.L.B.A., the MEDC and requirements concerning Community Development Block Grant funds, or the City of Marquette, arising from funding of the Project, employment practices and equal opportunity such as the Elliot Larsen Civil Rights Act, 1976 PA 453, as amended, the Persons with Disabilities Civil Rights Act, 1976 PA 220 as amended, Employer's Engaging in Unfair Labor Practices Act, 1989 PA 278, as amended; worksite safety and health including those related to hazardous materials; business ethics and compliance, including any Contract Compliance divisions of the state or federal government or any similar commission having jurisdiction; immigration; environmental compliance such as the Clean Air Act, as amended, the Federal Water Pollution Control Act; licensing, building, and permitting.

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

**§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

**§ 3.8 Allowances**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

### § 3.10 Contractor's Construction and Submittal Schedules

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

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

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

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services,



certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Contractor shall use its best efforts to minimize any interference with the occupancy of beneficial use of any areas, roadways, and buildings adjacent to the area of the Work.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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

### § 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them, and the State Land Bank Authority, State of Michigan, its departments, divisions, agencies, offices, commissions, officers, and employees as required by the SLBA Grant Agreement, 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

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(other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

**§ 3.18.3** Contractor's indemnity obligations shall include all claims and judgments which may be made against any indemnifying party for any Contractor's violation or alleged violation of applicable laws, including fines, penalties, damages, expenses, including attorney fees in connection with such violations or requirement of a public authority that bears upon Contractor's performance of the Work, including Contractor's failure to secure any permit, approval, license, or inspection required by the Contract Documents or any violation of any permit or other approval of a public authority applicable to the Work.

#### ARTICLE 4 ARCHITECT

##### § 4.1 General

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

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

##### § 4.2 Administration of the Contract

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

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

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

##### § 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

### § 5.3 Subcontractual Relations

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

§ 5.3.1 Before entering into any agreement with each Subcontractor, Contractor shall require the Subcontractor to verify in writing that neither Subcontractor nor any owner, partner, director, officer, or principal of Subcontractor (a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions funded or administered by any federal or state department/agency; (b) has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local), including as defined in 45 CFR 1.185; violation of federal or state antitrust statutes; or

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commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (c) is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or (d) has within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

§ 5.3.2 Contractor shall not knowingly enter into any transaction with any subcontractor or supplier who is debarred, suspended, declared ineligible, or voluntarily excluded from transactions by any federal or state department/agency.

**§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

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

**ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

~~§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12. **Not used.**~~

**§ 6.2 Mutual Responsibility**

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

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

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

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

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

§ 7.1.4 No course of conduct or dealing between the parties, no expressed or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by an alteration or addition to the Work, whether or not there is any unjust enrichment to the Work, shall be the basis of any claim for an increase in the Contract Sum or for a change in the Contract Time in the absence of a Change Order or Construction Change Directive.

§ 7.1.5 Execution of a Change Order or receipt of a Construction Change Directive constitutes Contractor's acceptance of all matters arising from the proposed change, including, but not limited to, all costs and impact claims of any kind associated with such change and all adjustments to the Contract Sum, Contract Time and construction schedule.

### § 7.2 Change Orders

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

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

**§ 7.3 Construction Change Directives**

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

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

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

- 1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- 3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- 4 As provided in Section 7.3.4.

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

- 1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- 2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- 3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- 4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- 5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

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

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

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

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### § 7.4 Minor Changes in the Work

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

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

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

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

#### § 8.2 Progress and Completion

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

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

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

#### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1 & 2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. Notwithstanding the foregoing, an extension of Contract Time shall only be granted where delay occurs to the critical path of the work and provided Contractor has taken reasonable measures to mitigate the impact of such delay. Further, Contractor shall provide written notice of delay within five (5) days of the beginning of such delay, specifying in detail the cause of the delay and Contractor's efforts to mitigate the delay.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents and specifically afford such relief. Except as expressly afforded under other provisions of the Contract Documents, Contractor shall not be entitled to any compensation or recovery of any damages in connection



with any delay, including without limitation any consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

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

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

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

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

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

### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly

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due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

**§ 9.5 Decisions to Withhold Certification**

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

- 1 defective Work not remedied;
- 2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- 3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- 4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- 5 damage to the Owner or a Separate Contractor;
- 6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- 7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, make payment directly to any Subcontractor or supplier or issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

**§ 9.5.5** If Owner in part pays any sums to cure any breach by Contractor, to correct defective Work, or to complete the Work, Owner shall have the right to offset such amount against the Contract Sum.

**§ 9.6 Progress Payments**

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

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

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

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

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

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

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. ~~At Owner's request, Contractor shall, 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 and promptly secure discharge of the lien.~~

#### § 9.7 Failure of Payment

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

#### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

#### § 9.9 Partial Occupancy or Use

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

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

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

#### § 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or

satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment;
- .5 latent defects; or
- .6 indemnity and defense requirements in the Agreement.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**

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

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

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

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

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shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 1.5 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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

#### § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does

not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

§ 11.3 **Waivers of Subrogation**

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered and paid by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered and paid by this separate property insurance.

§ 11.4 **Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused to the extent such loss is covered and paid by insurance proceeds.

§ 11.5 **Adjustment and Settlement of Insured Loss**

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

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that



purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

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

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

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

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

#### § 12.2.2 After Substantial Completion

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

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

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

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be

sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**§ 12.3 Acceptance of Nonconforming Work**

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

**ARTICLE 13 MISCELLANEOUS PROVISIONS**

**§ 13.1 Governing Law**

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

**§ 13.2 Successors and Assigns**

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

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

**§ 13.3 Rights and Remedies**

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

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

**§ 13.4 Tests and Inspections**

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

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

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

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

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

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

**§ 13.5 Interest**

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

§13.6 During performance of the Work, Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their sex, race, creed, color, religion, age, height, weight, marital status, national origin, ancestry, sexual orientation, disability, genetic information or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth this nondiscrimination clause. Contractor shall in all solicitations or advertisements for employees or advertisements for employees, placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to sex, race, creed, color, religion, age, height, weight, marital status, national origin, ancestry, sexual orientation, disability, or veteran status.

**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**§ 14.1 Termination by the Contractor**

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

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

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

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

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

**§ 14.2 Termination by the Owner for Cause**

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

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards 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; or
- .5 makes a general assignment for the benefit of its creditors, or if a receiver, liquidator, trustee, or assignee is appointed because of Contractor's insolvency or financial condition.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

~~§ 14.2.5 A termination for default under this Article, if determined to be wrongfully made, shall be deemed and treated as a termination for convenience under Article 14.4.~~

**§ 14.3 Suspension by the Owner for Convenience**

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

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

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

**§ 14.4 Termination by the Owner for Convenience**

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

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

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

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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

§ 15.1.3.3 Contractor shall clearly designate its Claim as a NOTICE OF CLAIM and include with its Claim an affidavit signed under oath, attesting to the facts and amount of such Claim. Contractor's strict compliance with the form and filing requirements of this provision is an absolute condition precedent to any claim and Contractor's failure to make a claim within this deadline waives the Claim.

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Contractor shall only be entitled to assert a claim for the time extension where the abnormal weather conditions exceed conditions that could reasonably be anticipated for any 25-year period at the Project location.

**§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- 1—damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- 2—damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

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

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

### § 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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

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**Exhibit I**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY,  
AND VOLUNTARY EXCLUSION**

The Bidder, \_\_\_\_\_, certifies by submission of its Bid that, neither the Bidder nor any owner, partner, director, officer, or principal of the Bidder, nor any person in a position with management responsibility or responsibility for the administration of the proposed work:

(a) Is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions funded or administered by any federal or state department/agency;

(b) Has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local), including as defined in 45 CFR 1185; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or

(d) Has within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

The Bidder further certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

By \_\_\_\_\_  
Authorized Signature for Bidder

\_\_\_\_\_  
Printed Name and Title